



# SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

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## NEW RULES AND RULE PROPOSALS

**COMMISSION ADOPTS RULE 144 and RELATED PROPOSALS.** The SEC announced today the promulgation in final form of Rule 144, relating to the resale of restricted securities and the resale of securities by control persons, together with other rule and forms provisions designed more effectively to implement a primary purpose underlying the securities acts, namely, to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails.

In announcing these rules, Chairman William J. Casey made the following statement:

The Commission is today making final these rules both to protect the purchasers of so-called "letter" or "restricted" stock and other securities and to create greater clarity and certainty as to when and how such securities and securities held by control persons may be sold. We have considered the more than 600 pages of comments submitted since the proposed rule was put out for comment on September 14 and have made various changes which we believe to be responsive to most of the meaningful questions raised in these comments. Additional investor protection will come from assuring that information is available about the issuing company, requiring a definite holding period of two years to establish that the seller has held the securities at risk, and establishing quantitative restrictions on the amount of securities sold within a 6-month period with a view to minimizing wide swings in market prices. The new rules are also designed to increase the number of companies about which information is publicly available.

Among the more important changes from the proposed rule are the following:

1. It has been made clear that the rule is non-exclusive, so that persons holding restricted stock or debt securities purchased after the effective date of the Rule may continue to rely on the statutory exemptions in the Securities Act, without, however, the comfort of Commission "no-action" letters. The Commission has noted, nonetheless, that persons who sell securities outside the rule assume a substantial burden of proof in establishing that the exemptions are available to them.
2. The rule will not be applied retroactively, although securities acquired prior to April 15, 1972, the effective date of the rule, may be sold pursuant to the rule after that date. The Commission will continue to issue no-action letters in regard to securities acquired before April 15, 1972.
3. The rule<sup>97</sup> provides that a notice of proposed sale of securities under the rule must be transmitted to the Commission concurrently with the sale instead of ten days prior to the sale, as required in the proposed rule.
4. The "fungibility" concept has been discarded with regard to restricted as well as unrestricted securities purchased during the holding period.
5. If specified conditions are met, bona fide debt obligations and installment purchase contracts will be considered to be full payment for purposes of starting the holding period.

With these new proposals, the Commission believes that it has simplified and clarified rules governing the sale of securities and refined and improved investor protection by updating and integrating the pattern of disclosure called for by the 1933 and 1934 Acts.

\* \* \*

A summary of the provisions of Rule 144, which was adopted under the Securities Act of 1933, and which will become effective on April 15, 1972, and of certain related actions also taken by the Commission follows:

Rule 144 provides that any affiliate (i.e., control person) or other person who sells restricted securities for his own account, or any person who sells either restricted or other securities for the account of an affiliate of the issuer, shall be deemed not to be engaged in a "distribution" of the securities and therefore not to be an underwriter of the securities if all of the terms and conditions of the rule are met. The term "restricted securities" is defined to mean securities acquired from their issuer or from an affiliate of such issuer in a transaction or chain of transactions not involving any public offering.

There must be available public information with respect to the issuer of the securities. This condition is deemed to be met if the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 and has filed all reports due within the past 90 days and in addition the most recent annual report required to be filed. If the issuer is not subject to those reporting requirements, there must be publicly available certain information concerning the issuer specified in paragraph (a)(4) of Rule 15c2-11 under the Exchange Act.

If the securities sold are restricted securities, they must have been beneficially owned and paid for for a period of at least two years. The rule provides that the amount of securities which may be sold thereunder during any period of six months shall not exceed the lesser of one percent of the class outstanding, or the average weekly volume of trading on all exchanges, if the securities are traded on such exchanges. In the case of sales by affiliates, the amount must be computed on the basis of all restricted and other securities sold, while in the case of other persons the amount shall be computed only on the amount of restricted securities sold. In certain situations, sales must be aggregated with those made by other persons.

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The securities must be sold in "brokers' transactions" within the meaning of Section 4(4) of the Securities Act. There can be no solicitation of buy orders by the broker or the seller of the securities, and the broker can receive only the usual and customary broker's commission.

If the securities to be sold will exceed 500 shares or other units or the aggregate sale price will exceed \$10,000, a notice of the sale must be transmitted to the Commission concurrently with the sale. If the securities are not sold within 90 days after the notice is filed, an amended notice must be filed concurrently with any further sales. Form 144 to be used in filing the above notice accompanies the rule. (Rel. 33-5223)

**EXEMPTION RULE UNDER SECURITIES ACT.** The Commission has adopted Rule 237 which exempts from registration under that Act outstanding securities held by persons, other than the issuer, control persons or brokers or dealers, if the following conditions are met:

The issuer is a domestic issuer and has been actively engaged in business as a going concern for at least five years; and

The securities have been beneficially owned and paid for by the seller for at least five years and are sold in negotiated transactions otherwise than through a broker or dealer.

The amount of securities which may be sold during any one year may not exceed the lesser of the gross proceeds from the sale of one percent of the class outstanding or \$50,000.

A notice of intention to sell securities under the rule must be filed by the selling security holder with the appropriate Regional Office of the Commission 10 business days before the sale. The effective date of Rule 237 is April 15, 1972. (Rel. 33-5224)

**AMENDMENTS TO REGULATION A.** The Commission has adopted amendments to Regulation A, a general exemption regulation under the Securities Act of 1933. One of the amendments provides that offerings by non-controlling persons other than the issuer would not be counted against the amount which the issuer could offer for its own account. The maximum amounts which may be offered by various persons during any 12-month period are as follows: the issuer and estates may offer \$500,000; control persons (affiliates) may offer, in the aggregate, \$500,000 but no one affiliate, other than estate may offer more than \$100,000; and other persons may offer \$100,000 each but not more than \$300,000 in the aggregate.

The regulation has also been amended to provide that where the required notification is filed by an issuer which has filed or is required to file with the Commission certified financial statements for its last fiscal year, the financial statements required to be included in the offering circular for such fiscal year must also be certified.

The effective date of these amendments is April 15, 1972. (Rel. 33-5225)

**AMENDMENTS TO FORMS 10-K AND 10-Q.** The Commission has adopted amendments to annual report Form 10-K and quarterly report Form 10-Q under the Securities Exchange Act of 1934. The amendments require registrants to indicate whether or not they have filed all annual, quarterly and other reports required to be filed with the Commission within the last 90 days and in addition has filed the most recent annual report required to be filed. This will enable persons who wish to sell securities pursuant to Rule 144 to determine whether the registrant is up to date in its reporting requirements and therefore has made the disclosure requisite to the sale of securities under that rule. (Rel. 34-9442). In addition, the Commission has adopted further amendments to these forms requiring certain information relating to the issuance of unregistered securities in reliance on exemptions from registration under the Securities Act.

The effective date of these amendments is February 10, 1972. (Rel. 34-9443)

**ANTI-FRAUD RELEASE.** The Commission has also issued a Release stating its opinion that the anti-fraud provisions of the securities acts are violated when an issuer, an affiliate of the issuer, or other persons, in connection with a private placement of securities, fail to inform the purchaser fully as to the circumstances under which he is required to take and hold the securities and the limitations upon their resale. (Rel. 33-5226 and Rel. 34-9444).

**NOTE:** With respect to the above cited releases, pending their distribution to the appropriate Commission mailing lists, the complete texts will appear in the Federal Register shortly.

#### COMMISSION ANNOUNCEMENT

**SEC ORDER CITES JOHN A. KEMPER & CO.** The Commission has ordered public administrative proceeding under the Securities Exchange Act of 1934 against John A. Kemper & Co., Inc., registered broker-dealer, John A. Kemper, Jr., board chairman, Anne H. Kemper, an officer of the firm, and Phillip Allan Littell, president of the firm, all of Dayton, Ohio. The proceedings are based on allegations of the Commission's staff that during the period from about October 1970 to date respondents failed to amend Form BD to reflect changes in address, officers and ownership of registrant's equity securities, and that respondents offered the sale of securities at a time when registrant's aggregate indebtedness exceeded 2000 per cent of its net capital and that registrant did not have and did not maintain net capital of not less than \$5,000.

A hearing will be scheduled by further order to take evidence on the staff allegations and afford the respondents an opportunity to offer any defenses thereto for the purposes of determining whether the allegations are true, and if so, whether any action of a remedial nature should be ordered by the Commission.

COURT ENFORCEMENT ACTION

FIVE INDICTED IN SECURITIES FRAUD IN NEW YORK. The SEC New York Regional Office announced that a special federal grand jury in New York City has returned a 10 count sealed indictment made public on January 3, 1972, charging five individuals with conspiracy to violate and substantive violations of the anti-fraud provisions of the Securities Act of 1933 and the federal mail fraud statute in connection with purchases and sales of the stock of Lanai Electronics, Inc. The indictment further charges three of the defendants with obstruction of justice for threatening and intimidating a witness appearing in an investigation into this matter before the SEC. Named as defendants in the indictment are: Philip Bonodono of Brooklyn, N. Y., Bernard Weiss, president of Lanai Electronics, Inc., of Brooklyn, N. Y., Ronald Alpert, a former registered representative of Great Neck, N. Y., M. Perry Grant, a principal of a broker-dealer, of New York City and Erwin Layne of Brooklyn, N. Y. (LR-5275)

SCHWARTZ, FIELDS ENJOINED. The SEC Chicago Regional Office announced that on December 17, 1971, that the Federal court in Chicago had permanently enjoined Herbert Schwartz, of Beverly Hills, Calif., from violations of the registration and antifraud provisions of the Federal securities law in connection with the offer and sale of common stock of Pig 'N Whistle Corporation. On October 8, Emanuel Fields, of New York was similarly enjoined. The defendants consented to the court orders without admitting the allegations. (LR-5276)

HOLDING COMPANY ACT RELEASE

MIDDLE SOUTH UTILITIES/ARKANSAS POWER & LIGHT. The Commission has issued an order giving interested persons until February 1 to request a hearing on an application of Middle South Utilities, Inc., to increase the aggregate principal amount of short term notes that may be outstanding at any one time (which was granted by previous order), from \$40 million to \$60 million. The proceeds from the sale of these promissory notes were used by Middle South to purchase common stock of its subsidiaries companies, Arkansas Power and Light Company and Louisiana Power and Light Company. The additional \$20 million of borrowings will be made pro rata among such banks in accordance with their respective commitments and terms as indicated in the original Order of January 29, 1971. (Rel. 35-17423)

SECURITIES ACT REGISTRATIONS

CAMBRIDGE ROYALTY FUND--ALPHA 1972 (the Partnership), 2600 Tenneco Bldg., Houston, Tex. 77002, filed a registration statement on December 30 seeking registration of \$20 million of limited partnership interests, to be offered for public sale at \$5,000 per unit. The Partnership is to engage in the purchase of oil and gas royalty interests, primarily on exploratory or wildcat acreage. Cambridge Royalty Company is the general partner. (File 2-42752)

FIDELCO GROWTH INVESTORS (the Trust), 1200 E. Lancaster Ave., Rosemont, Pa. 19010, filed a registration statement on December 30 seeking registration of \$25 million of convertible subordinated debentures, due 1992, to be offered for public sale through underwriters headed by Blyth & Co., Inc., 14 Wall St., New York 10005. The Trust invests in long-term mortgage loans and other long-term real estate financing transactions. Latimer & Buck Advisers, Inc. is investment adviser. (File 2-42753)

AMERICAN PROTECTION INDUSTRIES, INC., 1501 S. Alameda St., Los Angeles, Calif. 90021, filed a registration statement on December 30 seeking registration of 350,000 shares of common stock, to be offered for public sale (\*at \$5 per share maximum) through underwriters headed by Faherty & Swartwood Inc., 70 Pine St., New York 10005. Also included in this statement are 100,000 shares which may be issued from time to time pursuant to the company's 1968 Qualified Stock Option Plan. The company is engaged in the business of security and protection, fire protection and transportation. Of the net proceeds of its stock sale, \$1,260,000 will be used to repay indebtedness and the balance for working capital and other corporate purposes. (File 2-42755)

CERBERONICS, INC., 5600 Columbia Pike, Falls Church, Va. 22041, filed a registration statement on December 30 seeking registration of 200,000 shares of Class A common stock, to be offered for public sale at \$4.50 per share by Herbert Young & Co., Inc. The company provides research, development, analysis and engineering services, mainly to national security and defense agencies of the U.S. Net proceeds of its stock sale will be used for working capital and other corporate purposes. (File 2-42756)

NATIONAL ACCOMMODATIONS, INC., 15250 Ventura Blvd., Sherman Oaks, Calif. 91403, filed a registration statement on December 30 seeking registration of 320,000 shares of common stock, of which 213,334 are to be offered for public sale by the company and 106,666 (being outstanding shares) by the holders thereof. The offering is to be made (\*at \$9 per share maximum) through underwriters headed by duPont Glore Forgan Inc., 833 Wilshire Blvd., Los Angeles, Calif. 90017. The company engages primarily in the operation of health care facilities and resident hotels. Of the net proceeds of its stock sale, \$800,000 will be used to retire bank borrowings incurred and short-term notes assumed in connection with the acquisition of Mesa General Hospital and the balance for working capital and other corporate purposes. (File 2-42758)

**PANDEL-BRADFORD, INC.**, 200 Market St., Lowell, Mass. 01852, filed a registration statement on December 30 seeking registration of 500,000 shares of common stock, of which 200,000 are to be offered for public sale by the company and 300,000 (being outstanding shares) by the holders thereof. The offering is to be made (\*at \$22 per share maximum) through underwriters headed by New York Hanseatic Corp., 60 Broad St., New York 10005. The company develops, designs, manufactures and markets man-made leather substitutes. Of the net proceeds of its stock sale, \$2,100,000 will be used to repay bank indebtedness and the balance for working capital and other corporate purposes. (File 2-42759)

**GOLDEN STATE FOODS CORP.**, 639 S. 7th Ave., City of Industry, Calif. 91745, filed a registration statement on December 30 seeking registration of 210,000 shares of common stock, to be offered for sale by Crowell, Weedon & Co., One Wilshire Blvd., Los Angeles, Calif. 90017 at a proposed maximum offering price of \$11 per share\*. The company is engaged in the preparation and distribution of food products to, among others, the McDonald restaurant chain. The net proceeds will be used to reduce bank debt incurred to finance increased accounts receivable and inventory and to expand the company's warehousing operations. (File 2-42761)

**PETROLEUM EXPLORATION & DEVELOPMENT FUND, INC.**, 744 Hickory St., Abilene, Tex. 79604, filed a registration statement on December 30 seeking registration of \$5 million of Preformation Limited Partnership Interests in 1972 Program in units of \$5,000 (\$10,000 minimum) to be formed under the name of Petroleum Exploration & Development Funds - 1972 Program, Ltd. Drilling objectives of the program are to drill a minimum of 65-70 net wells for oil and gas in the U.S., or Canada. (File 2-42762)

**TEXAS POWER & LIGHT COMPANY**, 1511 Bryan St., Dallas, Tex. 75201, filed a registration statement on December 30 seeking registration of \$40 million of First Mortgage Bonds, due 2002, and 250,000 shares of cumulative preferred stock to be offered for sale at competitive bidding. The net proceeds to be received from the bonds and stock will be used to meet expenditures for its construction program and for other corporate purposes. (File 2-42763)

**SIGNAL FINANCE CORPORATION**, Three Gateway Center, Pittsburgh, Pa. 15222, filed a registration statement on December 30 seeking registration of \$4,200,000 of senior notes, Series A, due 1974 through 1977 to be offered for sale through underwriters headed by Arthurs, Lestrangle and Short, 2 Gateway Center, Pittsburgh, Pa. 15222. The company is a holding and management corporation engaged through subsidiaries in the consumer finance business, including personal installments loans, purchasing sales finance contracts and related activities. The net proceeds received from the sale of the notes will be used to reduce short-term bank loans, which were used to supply funds for personal installment loans through the corporation's loan offices. (File 2-42764)

**STOCK PLANS FILED.** The following have filed Form S-8 registration statements with the SEC seeking registration of securities to be offered pursuant to employee stock and related plans:  
 Computer Machinery Corporation, Los Angeles, Calif. (File 2-42754) - 600,000 shares  
 Agway Inc., DeWitt, N. Y. (File 2-42757) - \$1,500,000 of debentures, due 1979, and 15,000 6% cumulative preferred shares (\$100 par)

**SECURITIES ACT REGISTRATIONS. Effective January 7:** A. T. Cross Co., 2-42388; Crown Zellerbach Corp., 2-42480; Kentucky Power Co., 2-42579.

\*As estimated for purposes of computing the registration fee.

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