

sec news digest

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ENFORCEMENT PROCEEDINGS

FINAL JUDGEMENT AGAINST BALI JEWELRY

The Securities and Exchange Commission announced that on September 2 Bali Jewelry, Ltd. (Bali) and Private Brands, Inc. (Private Brands) consented to the entry of final judgments of permanent injunctive relief providing that Bali and Private Brands would institute policies and procedures to ensure that Bali and Private Brands' books and records and systems of internal controls are in compliance with the federal securities laws.

In addition, Bali's independent auditor, Jacob Schwartz (Schwartz) of Horowitz, Schwartz & Winkler, consented to be permanently enjoined from further violations of the antifraud provisions of the federal securities laws. Schwartz also agreed to disgorge \$9,840, representing the fees he obtained in connection with his audit of Bali's 1989 financial statements, plus prejudgment interest thereon of \$3,478. Schwartz also consented to the issuance of an Opinion and Order Pursuant to Rule 2(e) of the Commission's Rules and Practice (Order) making findings and imposing remedial sanctions against Schwartz. Under the Order, Schwartz will be barred from appearing or practicing before the Commission, with the right to reapply to the Commission after three years. [SEC v. Bali Jewelry, Ltd. U.S.D.C., S.D.N.Y., 93 Civ. No. 8604, PKL] (LR-14221)

COMPLAINT FILED AGAINST STANLEY LEPELSTAT, ET AL.

On September 8, 1994, the Commission filed a complaint seeking injunctive and other relief and civil penalties in the United States District Court for the Southern District of New York against Stanley Lepelstat (Lepelstat), Sheila Lepelstat, Richard M. Tinger, Steven A. Feller, Kenneth Roth and Ronald G. Sherry, former officers and directors of Accuhealth, Inc. The Complaint alleges that from 1986 through February 1992, the defendants engaged in a fraudulent scheme to divert unrecorded cash to fund a variety of off-books payments, including payments to themselves. According to the complaint, the defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Lepelstat, Sheila Lepelstat, Tinger, Feller and Roth violated Section 17(a) of the Securities Act; Lepelstat, Tinger and Sherry violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder in connection with falsified books and records and the circumvention of Accuhealth's internal controls and Exchange Act Rule 13b2-2 in connection with misstatements and omissions to Accuhealth's independent auditors; and Feller violated Section 13(b)(5) of the Exchange Act and

Rule 13b2-1 thereunder. The complaint also seeks disgorgement, prejudgment interest and a civil penalty from Lepelstat in connection with his alleged wrongful sale of Accuhealth common stock.

Without admitting or denying the allegations of the complaint, Tinger and Feller submitted settlement offers consenting to the entry of Final Judgments that permanently enjoin each from violating certain provisions of the federal securities laws and bar each from serving as an officer or director. In addition, Tinger has agreed to pay a \$10,000 civil penalty. [SEC v. Stanley Lepelstat, et al., Civil Action No. 94 Civ. 6489, LAP, S.D.N.Y. 1994] (LR-14222)

ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST ACCUHEALTH, GEORGE MISZKE AND WILLIAM MAKADOK

On September 8, 1994, the Commission instituted administrative proceedings pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act against Accuhealth, Inc. and George Miszke, a former employee. It also instituted administrative proceedings pursuant to Section 21C of the Exchange Act and Rule 2(e) of the Commission's Rules of Practice against William Makadok, formerly Accuhealth's Principal Financial and Accounting Officer. Without admitting or denying the findings contained in the Commission's Orders, Accuhealth, Miszke and Makadok submitted offers of settlement agreeing to the issuance of orders directing them to cease and desist from violating or causing violations of Sections 10(b), 13(a), 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13 and 13b2-1, and, as to Makadok only, Rule 13b2-2. Accuhealth also agreed in its settlement offer to an order directing it to cease and desist from violating or causing violations of Section 17(a) of the Securities Act.

The Commission's Order finds that Accuhealth's violations arose in connection with a scheme carried out by the company and former officers and directors to divert unrecorded cash from certain Accuhealth drugstores to fund a variety of off-books cash payments, including payments to officers, directors and employees. The Order also finds that from 1989 through 1992 Accuhealth overstated its year-end inventory, and Miszke participated in the cash diversion scheme and inventory overstatement. According to the Order against Makadok, he recklessly signed two quarterly reports and assisted in the preparation of financial statements for an annual report when he had failed to investigate certain incidents that put him on notice that fraud was occurring at the company. (Rels. 34-34645 and 34-34646)

ADMINISTRATIVE PROCEEDINGS AGAINST MCCARLEY & ASSOCIATES

The Commission announced that it issued an Order Instituting Proceedings, Making Findings and Imposing Remedial Sanctions in public administrative proceedings instituted pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act (Exchange Act) against McCarley & Associates, Inc. (McCarley & Associates), a registered broker-dealer headquartered in Greenville, South Carolina. The Commission simultaneously accepted an offer of settlement submitted by McCarley & Associates in which it consented that its registration as a broker-

dealer be revoked. The Commission imposed this sanction and made its findings based on the entry of an order of permanent injunction that was issued against McCarley & Associates on August 16, 1993 by the United States District Court for the District of South Carolina enjoining McCarley & Associates from violating, and aiding and abetting violations of, the antifraud, net capital, customer protection and books and records provisions of the Exchange Act. (Rel. 34-34624)

INVESTMENT COMPANY ACT RELEASES

U.S. GOVERNMENT INCOME PORTFOLIO A

An order has been issued under Section 8(f) of the Investment Company Act declaring that U.S. Government Income Portfolio A has ceased to be an investment company. (Rel. IC-20531 - September 7)

TAX-EXEMPT INCOME PORTFOLIO B

An order has been issued under Section 8(f) of the Investment Company Act declaring that Tax-Exempt Income Portfolio B has ceased to be an investment company. (Rel. IC-20534 - September 7)

EQUITY INCOME PORTFOLIO

An order has been issued under Section 8(f) of the Investment Company Act declaring that Equity Income Portfolio has ceased to be an investment company. (Rel. IC-20532 -September 7)

TAX-EXEMPT INCOME PORTFOLIO A

An order has been issued under Section 8(f) of the Investment Company Act declaring that Tax-Exempt Income Portfolio A has ceased to be an investment company. (Rel. IC-20533 - September 7)

EQUITY PORTFOLIO

An order has been issued under Section 8(f) of the Investment Company Act declaring that Equity Portfolio has ceased to be an investment company. (Rel. IC-20535 - September 7)

YANKEE FUNDS

An order has been issued under Section 8(f) of the Investment Company Act declaring that Yankee Funds has ceased to be an investment company. (Rel. IC-20536 - September 7)

U.S. GOVERNMENT INCOME PORTFOLIO B

An order has been issued under Section 8(f) of the Investment Company Act declaring that U.S. Government Income Portfolio B has ceased to be an investment company. (Rel. IC-20537 - September 7)

HOLDING COMPANY ACT RELEASES

ALABAMA POWER COMPANY

An order has been issued authorizing Alabama Power Company (Alabama Power), a public-utility subsidiary company of The Southern Company (Southern), a registered holding company, to amend Alabama Power's charter in order to issue more unsecured debt without first obtaining an affirmative vote of the majority of the number of preferred shares outstanding (Proposal 1). Should Proposal 1 fail to receive the requisite number of votes, Alabama Power proposes to waive a charter provision in order to issue or assume, until October 1, 2004, securities representing unsecured debt having maturities of less than ten years in excess of 10% of capital, surplus, and secured debt, provided that the amount of securities representing unsecured debt having maturities of less than ten years outstanding on January 1, 2005, shall not exceed such 10% limitation, and Alabama Power's total indebtedness represented by unsecured securities shall not exceed 20% of capital, surplus, and secured debt. Both proposals require approval from Alabama Powers' preferred shareholders. In addition, Proposal 1 requires the approval of Southern as Alabama Power's sole common shareholder. The Commission previously authorized Alabama Power to solicit proxies from its preferred shareholders to effect both proposals. (Rel. 35-26118)

SELF-REGULATORY ORGANIZATIONS

APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change submitted under Rule 19b-4 by the National Association of Securities Dealers (SR-NASD-94-34) to amend the NASD Rules relating to fees for the late payment of service charges. (Rel. 34-34639)

APPROVAL AND ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change filed by the Chicago Board Options Exchange (SR-CBOE-94-10) and is publishing notice of, and is granting accelerated approval to, proposed rule changes by the American Stock Exchange (SR-Amex-94-21), the New York Stock Exchange (SR-NYSE-94-22), the Pacific Stock Exchange (SR-PSE-94-12), and the Philadelphia Stock Exchange (SR-Phlx-93-37), and is publishing notice of, and granting accelerated approval to, amendments by the American Stock Exchange, Chicago Board Options Exchange, Pacific Stock Exchange and Philadelphia Stock Exchange pursuant to Rule 19b-4 under the Securities Exchange Act relating to short sales of Nasdaq National Market securities. Publication of the approval order is expected in the Federal Register during the week of September 12. (Rel. 34-34632)