

# sec news digest

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## COMMISSION ANNOUNCEMENTS

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### CONSUMER AFFAIRS ADVISORY COMMITTEE; RENEWAL OF COMMITTEE

Chairman Levitt, with the concurrence of the Commission, has renewed the Consumer Affairs Advisory Committee. FOR FURTHER INFORMATION CONTACT: Jonathan M. Gottsegen, Counsel to the Director, Office of Investor Education and Assistance, at (202) 942-7040. (Rel. 34-36908; File No. 265-19)

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## ENFORCEMENT PROCEEDINGS

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### PUBLIC ADMINISTRATIVE SANCTIONS ORDERED AGAINST WAYNE CONWELL AND PROFESSIONAL MANAGEMENT-ST. LOUIS, INC.

The Commission entered an Order Making Findings and Imposing Remedial Sanctions pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940 against Professional Management-St. Louis, Inc., a registered investment adviser, and its president Wayne B. Conwell.

The Order alleges that in April 1992, Conwell convinced two advisory clients to invest \$11,714.84 through Professional Management. Conwell only invested \$2,500 and misappropriated the remainder. Thus, Professional Management and Conwell willfully violated and/or willfully aided and abetted violations of the antifraud provisions of the federal securities laws.

In March 1994, the State of Missouri convicted Conwell of one count of stealing by deceit based on the above facts and one count of passing bad checks. In April 1994, Conwell received concurrent sentences of five years probation for each offense and was ordered to pay \$9,214.84 in restitution.

The Commission's order revokes Professional Management's registration as an investment adviser and bars Conwell from association with securities professionals. The Commission also ordered disgorgement in the amount of \$5,914, plus prejudgment interest, but waived disgorgement and did not impose a civil penalty based upon Professional Management's and Conwell's demonstrated inability to pay. (Rel. IA-1554)

**ORDER MAKING FINDINGS AND IMPOSING SANCTIONS PURSUANT TO SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AGAINST R. MARVIN MEARS**

The Commission announced an Order Making Findings and Imposing Sanctions Pursuant To Section 9(b) of the Investment Company Act of 1940 against R. Marvin Mears (Mears), an officer and member of the Valuation Committee of Corporate Capital Resources, Inc., a business development company. Mears submitted an Offer of Settlement to the previously instituted administrative proceedings, consenting to the entry of the Order Making Findings, without admitting or denying the findings therein. The Order contains findings that the United States District Court for the Central District of California enjoined Mears from future violations or aiding and abetting violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1 and 13a-13.

The Order bars Mears from association with any investment adviser and investment company. (Rel. IC-21783; AAE Rel. 763)

**ORDER MAKING FINDINGS AND IMPOSING SANCTIONS PURSUANT TO SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AGAINST MORRIS LERNER**

The Commission announced an Order Making Findings and Imposing Sanctions Pursuant To Section 9(b) of the Investment Company Act of 1940 against Morris L. Lerner (Lerner), Secretary and a member of the Board of Directors of Corporate Capital Resources, Inc., a business development company. Lerner submitted an Offer of Settlement to the previously instituted administrative proceedings, consenting to the entry of the Order Making Findings, without admitting or denying the findings therein. The Order contains findings that the United States District Court for the Central District of California enjoined Lerner from future violations or aiding and abetting violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1 and 13a-13.

The Order bars Lerner from association with any investment adviser and investment company. (Rel. IC-21790; AAE Rel. 765)

**REGISTERED REPRESENTATIVE BARRED AND FINED \$50,000 IN CONNECTION WITH SALE OF DERIVATIVE SECURITIES**

The Commission today announced the institution and settlement of an administrative proceeding against Mitchell A. Vazquez, a former registered representative of BT Securities Corporation. Without admitting or denying the findings, Vazquez consented to the entry of an order requiring him to permanently cease and desist from committing or causing any violations or future violations of the antifraud and reporting provisions of the federal securities laws. The Order provides that Vazquez be barred from association with any broker, dealer, investment company or investment advisor with a right to reapply for association to the appropriate self-regulatory organization after four years from the date of the Order. Vazquez simultaneously entered into a settlement with the Federal Reserve Board. In settlement of both proceedings, Vazquez agreed to pay a single civil penalty of \$50,000.

Vazquez' violations stem from his participation in the offer and sale of derivatives to Gibson Greetings, Inc. During the period from October 1992 to March 1994, Vazquez recklessly misled Gibson about the value of the company's derivatives positions by providing Gibson with values that significantly understated the magnitude of Gibson's losses. Specifically, on two occasions while preparing its financial statements, Gibson sought valuations of its derivatives. On those occasions, Vazquez recklessly provided Gibson with valuations which understated Gibson's losses by more than 50%. Gibson used the valuations to prepare the financial statements included in its Form 10-K. As a result, Gibson's financial statements materially understated the company's losses related to derivatives. The Commission found that in providing the understated valuations, Vazquez caused Gibson to violate Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1.

The Order also finds that certain of the derivatives that BT Securities sold to Gibson were securities within the meaning of the federal securities laws. According to the Order, Vazquez recklessly made material misstatements and omissions to Gibson in connection with these transactions. Accordingly, the Commission found that Vazquez committed violations of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. (Rel. Nos. 33-7269; 34-36906; AAE Rel. 766)

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## INVESTMENT COMPANY ACT RELEASES

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### LEXINGTON GROWTH AND INCOME FUND, ET AL.

An order has been issued on an application filed by Lexington Growth and Income Fund, et al. under Section 6(c) of the Investment Company Act for an exemption from Sections 13(a)(2), 18(f)(1), 22(f), and 22(g) of the Act, and Rule 2a-7 thereunder, under Sections 6(c) and 17(b) of the Act for an exemption from Section 17(a)(1) of the Act, and under Section 17(d) of the Act and Rule 17d-1 thereunder to permit certain joint arrangements. The order permits certain investment companies to enter into deferred compensation arrangements with their trustees. (Rel. IC-21787 - February 27)

### SCHWAB CAPITAL TRUST, ET AL.

An order has been issued on an application filed by Schwab Capital Trust (Trust), et al. under Section 6(c) of the Investment Company Act exempting applicants from Section 12(d)(1) of the Act, under Sections 6(c) and 17(b) of the Act exempting applicants from Section 17(a) of the Act, and under Section 17(d) of the Act and Rule 17d-1 thereunder. The order permits the Trust to operate as a "fund of funds" and to acquire up to 100% of the voting shares of any acquired fund. (Rel. IC-21788 - February 27)

### TOMORROW FUNDS RETIREMENT TRUST, ET AL.

A notice has been issued giving interested persons until March 25 to request a hearing on an application filed by Tomorrow Funds Retirement Trust (Trust), and Weiss, Peck & Greer, L.L.C. (Adviser) (together, Applicants). Applicants seek an order granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Investment Company Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit shares of the Trust and beneficial interests and/or shares of any other investment company (or series thereof) that is designed to fund variable insurance products and for which the Adviser, or any of its affiliates, may serve now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor to be sold to and held by (a) variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies and (b) qualified pension and retirement plans. (Rel. IC-21789 - February 27)

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## SELF-REGULATORY ORGANIZATIONS

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### DELISTING GRANTED

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration Mickelberry Communications Incorporated, 8% Convertible Subordinated Debentures, due May 15, 2002. (Rel. 34-36889)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration Interpool, Inc. 5 1/4% Convertible Exchangeable Subordinated Notes, due December 15, 2018. (Rel. 34-36890)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration National Convenience Stores Incorporated, Common Stock, \$.01 Par Value. (Rel. 34-36891)

An order has been issued granting the application of the American Stock Exchange to strike from listing and registration Armatron International, Inc., Common Stock, \$1.00 Par Value. (Rel. 34-36895)

### PROPOSED RULE CHANGES

The Pacific Stock Exchange filed a proposed rule change (SR-PSE-96-01) to amend its Options Firm Quote Rule (rule) in order to codify certain related floor policies and clarify certain provisions of the rule. Publication of the notice is expected in the Federal Register during the week of February 26. (Rel. 34-36883)

The Chicago Board Options Exchange filed a proposed rule change (SR-CBOE-96-05) to amend Exchange Rule 24.14, which provides for disclaimers of liability on behalf of designated index reporting authorities. Publication of the notice is expected in the Federal Register during the week of March 4. (Rel. 34-36896)

### APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change (SR-Amex-95-50) by the American Stock Exchange that permits the listing and trading of Commodity Indexed Preferred or Debt Securities (ComPS). The value of ComPS will be linked to changes in a single commodity. Publication of the approval order is expected in the Federal Register during the week of March 4. (Rel. 34-36885; IS-939)

ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

The Commission approved on an accelerated basis a proposed rule change (SR-CBOE-96-06) filed by the Chicago Board Options Exchange which amends paragraph (c), "Pre-Hearing Exchange," of CBOE Rule 18.22, "General Provisions Governing Pre-Hearing Proceeding," to allow parties to provide a list of documents that have been produced previously to the other side, instead of providing the actual documents; require the list identifying witnesses to include the address and business affiliation of the witnesses listed; and require pre-hearing exchanges of documents and the list of documents previously produced to occur 20 days in advance of the hearing, instead of ten days, as is presently required. Publication of the approval order is expected in the Federal Register during the week of March 4. (Rel. 34-36894)