

# SEC NEWS DIGEST

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## COMMISSION ANNOUNCEMENTS

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### **LETTER SUBMITTED IN THE MATTER OF AMERICAN STOCK EXCHANGE LLC, ET AL. v. REUTERS LIMITED**

On February 5, 2001, the Commission submitted a letter, as amicus curiae, in the matter of American Stock Exchange LLC, et al v Reuters Limited, No. 13 113 00471 00 (American Arbitration Association) The letter addresses the issue of whether a securities information vendor's limited dissemination of last sale reports and quotation information for multiply-traded options from only the exchange with the highest trading volume is inconsistent with the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (OPRA Plan), a national market system plan approved by the Commission, and with the goals of the securities laws pursuant to which the Commission approved the OPRA Plan The letter sets forth the Commission's view that the OPRA Plan, which includes a requirement that agreements between OPRA and vendors must prohibit vendors from "exclud[ing] reports or otherwise discriminat[ing] on the basis of the market in which a transaction or quotation took place," is intended to prevent such limited dissemination

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## ENFORCEMENT PROCEEDINGS

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### **COMMISSION DISMISSES PROCEEDING AGAINST D.E. WINE INVESTMENTS, INC.**

The Commission has dismissed an administrative proceeding brought against D E. Wine Investments, Inc , a broker-dealer firm based in Houston, Texas, and Duncan E Wine, W. Randall Miller, and Kenneth B Karpf, registered principals of the firm On remand from a previous decision ordering further factual findings and a revised analysis, a law judge had found that the respondents violated the antifraud provisions of the securities laws by charging their customers undisclosed, excessive markups On review, the Commission concluded that the evidence presented did not establish the alleged violations (Rel 34-43929)

## **SEC CHARGES FRANKEL ASSOCIATES, GARY ATNIP AND SONIA HOWE RADENCOVICI, WITH SECURITIES FRAUD**

On February 6, the Commission filed a motion to amend the complaint filed in SEC v. Martin R. Frankel, et al , 3:00 CV 1778 (EBB), to add charges against two additional Frankel associates, Gary Atnip (Atnip) and Sonia Howe Radencovici (Howe). The Commission originally filed this action on September 18, 2000, charging Liberty National Securities, Inc (LNS), a registered broker-dealer located in Dundee, Michigan, and Robert J. Guyer (Guyer), LNS' president, with aiding and abetting Frankel's fraud. See Lit Release No 16707 On September 22, 2000, the Commission filed an amended complaint alleging that Martin R Frankel (Frankel), who was permanently enjoined from committing securities fraud and barred from the securities industry in 1992, masterminded a massive fraud to loot the assets of Franklin American Corporation (FAC), a public holding company, and numerous insurance companies located in Tennessee, Alabama, Oklahoma, Mississippi, Missouri and Arkansas See Lit Release No 16719 The amended complaint also alleged that John A Hackney (Hackney), FAC's Chief Executive Officer, participated in Frankel's fraud and deliberately hid Frankel's control of FAC, and his control over FAC's investments, from the Commission, state insurance regulators, employees of FAC and the public. Today's proposed second amended complaint alleges that Atnip, the Chief Financial Officer of FAC, worked closely with Frankel and Hackney, and deliberately hid Frankel's control of FAC, and his control over FAC's investments, from the Commission, state insurance regulators, employees of FAC and the public The proposed second amended complaint alleges that Howe, Frankel's former fiancée and long-time business associate, participated in Frankel's fraud by preparing false monthly account statements and trade confirmations and otherwise misrepresenting to FAC and its insurance company subsidiaries that Frankel was investing their assets through LNS

The proposed second amended complaint alleges the following Frankel commenced his fraudulent scheme in 1990, when he wanted to obtain a source of funds to buy and sell securities, and he decided to acquire businesses with liquid assets Frankel retained Hackney in October 1990 to help Frankel acquire a bank and, subsequently, an insurance company Hackney retained Atnip, an accountant, to assist in the process Hackney and Atnip knew that Frankel wished to hide his identity from the outset of their relationship Hackney helped Frankel establish the Thunor Trust (Thunor) to acquire FAC, a reporting company and the parent company of Franklin American Life Insurance Company (Franklin Life), while concealing Frankel's identity. Frankel appointed Hackney as Trustee of Thunor When Thunor acquired FAC and Franklin Life, Frankel appointed Hackney to be CEO, President and a director of both companies. Atnip was appointed to be CFO and a director of both companies. Hackney and Atnip were positioned to serve as fronts for Frankel

Through Thunor, Frankel ultimately acquired 83% of the outstanding stock of FAC. From 1991 through April 1999, Frankel directed FAC to acquire additional insurance company subsidiaries Pursuant to Frankel's direction, Thunor also acquired and became the sole shareholder of International Financial Corporation (IFC), a holding company for

four insurance companies Frankel, Hackney and Atnip caused FAC, IFC and their subsidiary insurance companies to invest their assets, which are reported to exceed \$215 million, through Frankel Specifically, Frankel claimed to invest funds forwarded to him by FAC, IFC and their insurance company subsidiaries in government securities through accounts purportedly maintained at LNS

Frankel did not, however, set up accounts for FAC, IFC and the insurance company subsidiaries at LNS Instead, Frankel fabricated trades, which Howe, a former broker, reported on phony LNS monthly account statements, and fake trade confirmations that Howe generated and sent to FAC, IFC and their insurance company subsidiaries Frankel invested a portion of the funds transferred to him by the insurance companies through brokerage accounts maintained at other broker-dealers Frankel, however, used a significant portion of the insurance companies' funds for lavish living expenses for himself and Howe, among others, misappropriating millions of dollars.

Finally, FAC's periodic reports were materially inaccurate In order to hide Frankel's involvement with FAC and the insurance companies, Hackney and Atnip filed inaccurate annual and quarterly reports with the Commission FAC's annual and quarterly reports failed to disclose that Frankel was a controlling shareholder of FAC, and that Frankel was also responsible for investing FAC's and its insurance company subsidiaries' assets through LNS in a related party arrangement The annual and quarterly reports also materially misrepresented FAC's financial condition For instance, FAC's annual and quarterly reports materially misstated FAC's revenues from investments that were purportedly being executed through LNS Hackney and Atnip also provided FAC's auditors with false information about the relationship among Frankel, Thunor, LNS and FAC. Additionally, Hackney and Atnip filed proxy statements on behalf of FAC that were materially misleading

Accordingly, the Commission filed a motion to amend the complaint in SEC v. Martin R. Frankel, John A Hackney, Robert J Guyer and Liberty National Securities, Inc , 3:00 CV 1778 (EBB), to add Howe as a defendant alleging that Howe violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and to add Atnip as a defendant alleging that he violated Sections 10(b) and 13(b) of the Exchange Act and Rules 10b-5 and 13b2-2 thereunder, and, as a control person, violated Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder The Commission is seeking permanent injunctions against future violations of these provisions of the securities laws, disgorgement of ill-gotten gains and pre-judgment interest, civil penalties, and orders barring Frankel, Atnip and Hackney from serving as an officer or director of a public company.

The Commission acknowledges the assistance of the U.S. Attorney's Office for the District of Connecticut in bringing this case [SEC v. Martin R. Frankel, John A Hackney, Robert J Guyer, Liberty National Securities, Inc , Gary Atnip, and Sonia Howe Radencovici, USDC, D Conn., 3 00 CV 1778, EBB] (LR-16888)

## **SEC FILES ADDITIONAL CHARGES AGAINST BRYAN EGAN AND BRYCAR FINANCIAL CORPORATION**

On February 6, the Commission filed an amended complaint against BryCar Financial Corporation and its president, Bryan J Egan, adding claims against BryCar and Egan for violations of the anti-fraud provision of the Investment Advisers Act of 1940, and the prohibition against selling unregistered securities contained in the Securities Act of 1933

The SEC initially commenced this action on September 19, 2000, alleging that Egan and BryCar were operating a fraudulent Ponzi scheme in which they collected millions of dollars from hundreds of investors with guarantees that, among other things, their "risk free" investments in so-called "pre-IPO" stock and other securities would generate 500% returns. The SEC's complaint also alleged that BryCar illegally offered and sold securities without being registered with the SEC as a broker-dealer

The SEC's amended complaint also sets forth additional factual allegations concerning the defendants' fraudulent scheme. Among other things, it is alleged that BryCar and Egan falsely told investors in BryCar's "long term" program that their initial investments were never at risk because they were guaranteed by bonds issued by Lloyds of London Bank and held in escrow by the SEC, that BryCar was an offshore corporation and subject only to a 3% tax liability on its trading profits, and that BryCar would pay all capital gains taxes on behalf of investors. Moreover, the amended complaint alleges that BryCar and Egan told investors that their funds had been used to purchase shares of AT&T Wireless stock in an IPO when, in fact, no such shares were ever purchased. It is further alleged that the payouts to some BryCar investors of profits relating to the sale of AT&T Wireless stock were sham transactions funded with money invested by more recent BryCar investors

The SEC's amended complaint alleges that BryCar never had a securities trading account in its name in which publicly traded securities were purchased for or on behalf of BryCar investors, although some securities were purchased with BryCar investors' funds in trading accounts held exclusively in Egan's name. It is also alleged that, on numerous occasions, the Egans looted investor funds from BryCar to support their lavish lifestyle. According to the SEC's amended complaint, BryCar investor funds were used to pay for Egan family vacations, artwork for the Egans' home, luxury automobiles and recreational vehicles, and other personal expenses. Additionally, it is alleged, \$75,000 of BryCar investors' funds was used to make an initial deposit on a \$1.5 million home in a country club residential development in Florida to which Egan planned to move his family.

The SEC's amended complaint seeks permanent injunctions barring the defendants from future violations of the anti-fraud provisions of the Securities Act of 1933 (Section 17(a)), the Securities Exchange Act of 1934 (Section 10(b) and Rule 10b-5), and the Investment Advisers Act of 1940 (Section 206(1) and (2)), the broker-dealer registration provisions of the Exchange Act (Section 15(a)), and the registration provisions of the Securities Act of 1933 (Section 5(a) and (c)), disgorgement of all illegal profits, plus prejudgment interest, and the imposition of civil money penalties

## **INVESTMENT COMPANY ACT RELEASES**

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### **COVA SERIES TRUST, ET AL.**

An order has been issued on an application filed by Cova Series Trust (CST), Securities First Trust (SFT), Met Investors Series Trust (MIT), Cova Financial Services Life Insurance Company, Cova Financial Life Insurance Company, Security First Life Insurance Company and Firstar Investment Research & Management Company, LLC, pursuant to Section 17(b) of the Investment Company Act, granting an exemption from the provisions of Section 17(a) of the Act, to permit certain series of MIT to acquire all of the assets and liabilities of CST and SFT. Because of certain affiliations, applicants may not rely on Rule 17a-8 under the Act. (Rel IC-24849 - February 5)

### **PAINWEBBER PACE SELECT ADVISORS TRUST, ET AL.**

An order has been issued on an application filed by PaineWebber PACE Select Advisors Trust and Mitchell Hutchins Asset Management, Inc under Section 6(c) of the Investment Company Act of 1940 amending a prior order that granted an exemption from Section 15(a) of the Act and Rule 18f-2 under the Act. The order permits applicants to enter into and materially amend sub-advisory contracts without obtaining shareholder approval. (Rel IC-24850 - February 6)

### **CITYFED FINANCIAL CORP.**

An order has been issued on an application filed by CityFed Financial Corp (CityFed) for an order under Sections 6(c) and 6(e) of the Investment Company Act exempting CityFed from all provisions of the Act, except Sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, until the earlier of February 6, 2002, or such time as CityFed would no longer be required to register as an investment company under the Act. The order extends an exemption granted until February 9, 2001 (Rel. IC-24851 - February 6)

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## **SECURITIES ACT REGISTRATIONS**

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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.

Registration statements may be obtained in person or by writing to the Commission's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549 or at the following e-mail box address <publicinfo@sec> In most cases, this information is also available on the Commission's website <www.sec.gov>

- S-8 INTERNET SECURITY SYSTEMS INC/GA, 6600 PEACHTREE DUNWOODY RD, BLDG 300 SUITE 500, ATLANTA, GA 30328 (678) 443-6000 - 3,120,615 (\$232,017,725.20) COMMON STOCK. (FILE 333-54670 - JAN. 31) (BR. 3)
- S-8 CONEXANT SYSTEMS INC, 4311 JAMBOREE RD, NEWPORT BEACH, CA 92660 (949) 221-4600 - 17,500,000 (\$305,019,750) COMMON STOCK. (FILE 333-54672 - JAN. 31) (BR. 5)
- S-8 IPI INC, 8091 WALLACE RD, EDEN PRAIRIE, MN 55344 (612) 975-6200 - \$1,050,000 UNITS OF LTD PARTNERSHIP INTEREST IN COMMODITIES. (FILE 333-54674 - JAN. 31) (BR. 4)
- S-3 HOMESIDE LENDING INC, 7301 BAYMEADOWS WAY, JACKSONVILLE, FL 32256 (904) 281-3000 - 1,000,000,000 (\$1,000,000,000) STRAIGHT BONDS. (FILE 333-54684 - JAN. 31) (BR. 7)
- S-8 TESSA COMPLETE HEALTH CARE INC/GA, 138 ESCONDIDO AVENUE, SUITE 207, VISTA, CA 92084 (760) 643-3952 - 3,840,000 (\$180,000) COMMON STOCK. (FILE 333-54686 - JAN. 31) (BR. 9)
- S-8 HUNGARIAN TELEPHONE & CABLE CORP, 32 CENTER STREET, SUITE 204, DARIEN, CT 06820 (203) -65-6-38 - 250,000 (\$2,095,000) COMMON STOCK. (FILE 333-54688 - JAN. 31) (BR. 7)
- S-8 HEALTHAXIS INC, 2500 DEKALB PIKE, NORRISTOWN, PA 19401 (610) 279-2500 - 10,000,000 (\$25,434,225) COMMON STOCK. (FILE 333-54690 - JAN. 31) (BR. 3)
- S-8 TYCO INTERNATIONAL LTD /BER/, 90 PITTS BAY ROAD, THE ZURICH CENTRE SECOND FLOOR, PEMROKE HM 08 BERMUDA, D0 (441) 292-8674 - 200,000 (\$12,344,000) COMMON STOCK. (FILE 333-54692 - JAN. 31) (BR. 6)
- S-8 TASTY FRIES INC, 650 SENTRY PKWY STE ONE, BLUE BELL, PA 19422 (610) 941-2109 - 1,250,000 (\$525,000) COMMON STOCK. (FILE 333-54694 - JAN. 31) (BR. 4)
- S-8 TRIANGLE PHARMACEUTICALS INC, 4 UNIVERSITY PLACE, 4611 UNIVERSITY DRIVE, DURHAM, NC 27707 (919) 493-5980 - 964,315 (\$6,750,205) COMMON STOCK. (FILE 333-54696 - JAN. 31) (BR. 1)

S-8 DIVINE INTERVENTURES INC, 4225 NAPERVILLE ROAD, SUITE 400, LISLE, IL 60532 (630) 799-3858 - 12,838,215 (\$19,057,046) COMMON STOCK. (FILE 333-54698 - JAN. 31) (BR. 8)

S-3 CSX CORP, ONE JAMES CNTR, 901 E CARY ST, RICHMOND, VA 23219 (804) 782-1400 - 800,000,000 (\$800,000,000) COMMON STOCK. (FILE 333-54700 - JAN. 31) (BR. 5)

S-8 FNB CORP/NC, 101 SUNSET AVE, P O BOX 1328, ASHEBORO, NC 27203 (336) 626-8300 - 109,300 (\$1,455,056.25) COMMON STOCK. (FILE 333-54702 - JAN. 31) (BR. 7)

S-3 WASHINGTON REAL ESTATE INVESTMENT TRUST, 6110 EXECUTIVE BOULEVARD, SUITE 800, ROCKVILLE, MD 20852 (301) 929-5900 - 1,000,000 (\$22,615,000) CONVERTIBLE PREFERRED SHARE OF BENEFICIAL INTEREST. (FILE 333-54704 - JAN. 31) (BR. 8)

S-3 U S RESTAURANT PROPERTIES INC, 5310 HARVEST HILL ROAD, SUITE 270 LB168, DALLAS, TX 75230 (972) 387-1487 - 592,025 (\$7,062,859) COMMON STOCK. (FILE 333-54706 - JAN. 31) (BR. 8)

S-8 MASTERPIECE TECHNOLOGY GROUP INC, 455 WARD CORNER RD, STE 110, LOVELAND, OH 45140 (425) 643-0777 - 2,300,000 (\$552,000) COMMON STOCK. (FILE 333-54708 - JAN. 31) (BR. 3)

S-8 WILSHIRE FINANCIAL SERVICES GROUP INC, 1776 SW MADISON STREET, PORTLAND, OR 97205 (503) 223-5600 - 4,000,000 (\$4,905,800) COMMON STOCK. (FILE 333-54710 - JAN. 31) (BR. 7)

S-8 ALLEGHENY TECHNOLOGIES INC, 1000 SIX PPG PLACE, PITTSBURGH, PA 15222 (412) 394-2800 - 200,000 (\$3,238,000) COMMON STOCK. (FILE 333-54712 - JAN. 31) (BR. 5)

S-8 WABASH NATIONAL CORP /DE, 1000 SAGAMORE PKWY S, P O BOX 6129, LAFAYETTE, IN 47905 (765) 448-1591 - 2,000,000 (\$20,812,500) COMMON STOCK. (FILE 333-54714 - JAN. 31) (BR. 5)

SB-2 SELECT MEDIA COMMUNICATIONS INC, 44E 32ND STREET, NEW YORK, NY 10016 (212) 584-1900 - 45,431,000 (\$45,431,000) COMMON STOCK. (FILE 333-54716 - JAN. 31) (BR. 9)

S-3 SUN COMMUNITIES INC, 31700 MIDDLEBELT RD, STE 145, FARMINGTON HILLS, MI 48334 (248) 932-3100 - \$2,355,576.50 COMMON STOCK. (FILE 333-54718 - JAN. 31) (BR. 8)

S-8 AMEUROTECH CORP, 5970 FAIRVIEW ROAD, SUITE 608, CHARLOTTE, NC 28210 (704) 926-5440 - 1,003,000 (\$2,006,000) COMMON STOCK. (FILE 333-54720 -