

# sec news digest

Issue 95-210

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## COMMISSION ANNOUNCEMENTS

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### SEC AND CFTC SUPPORT EXPANSION OF COOPERATIVE EFFORTS BY FUTURES AND SECURITIES SROs

The Securities and Exchange Commission and the Commodity Futures Trading Commission (CFTC) welcomed the announcement today by the Intermarket Financial Surveillance Group (IFSG) of an agreement to expand the cooperation among securities and futures SROs regarding the oversight of firms that are active in both the securities and futures markets. The agreement provides for joint or coordinated in-field examinations by securities and futures SROs on a voluntary basis, the sharing of information during any such joint examination, the informal discussion of interim findings, the opportunity to review each others' workpapers, the ability to share particular examination workpapers, and the ability to exchange final examination reports. (Press Rel. 95-228)

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## ENFORCEMENT PROCEEDINGS

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### CEASE AND DESIST PROCEEDINGS AGAINST NICHOLAS HOWARD

On October 30, 1995, the Commission issued an order instituting administrative and cease and desist proceedings against Nicholas P. Howard. In the Order, the Division of Enforcement alleges that Howard, who during the relevant period was head of European equity sales at James Capel Inc., a registered broker-dealer, and a managing director of New Europe Hotels, N.V. (NEH), aided, abetted, counseled, commanded or procured and caused violations of Rule 10b-9 of the Exchange Act and the antifraud provisions in connection with a part or none offering by NEH in January 1991 and a subsequent offering in November 1991. The Division also alleges that Howard aided, abetted, counseled, commanded or procured and caused violations of Section 17(a)(1) of the Investment Company Act in connection with the sales of NEH shares to a registered investment company. (Rel. 34-36433)

## TEMPORARY RESTRAINING ORDER AND ASSET FREEZE AGAINST SCOTT FRYE

The Commission announced that on October 27, 1995, a temporary restraining order was issued by Judge John S. Martin of the U.S.D.C., S.D.N.Y., against Scott A. Frye. The Court also froze the defendant's assets. The Order stems from a complaint filed by the Commission on the same day against the defendant, seeking, among other things, injunctive relief, disgorgement and civil penalties. A hearing will be held on November 3, 1995 on the Commission's application for a preliminary injunction.

As detailed in the complaint, beginning in or about May 1995 through the present, Frye has posted numerous messages on the InterNet, a decentralized web of computers, accessible to millions of potential investors across the country and world-wide, in which Frye has solicited funds from investors. The complaint alleges that Frye has used messages posted on the InterNet, and other written materials which he has distributed, in an attempt to lure investors with promises of riskless profits and above average returns from investments in two Costa Rican enterprises. However, Frye has made misrepresentations of material fact. Accordingly, the complaint alleges that the defendant violated the antifraud provisions of the federal securities laws. [SEC v. Scott A. Frye, 95 Civ. 9205, JSM] (LR-14702)

## BOILER-ROOM DEFENDANTS PERMANENTLY ENJOINED; ANOTHER PLEADS GUILTY

The Commission announced that on October 17, Final Judgments of Permanent Injunction, Disgorgement and Civil Monetary Penalties were entered in the U.S. District Court for the District of N.H., by consent, against James Papatola, Victor G. Campana, Ken Bogannam, Adams Financial Services, Inc., Adams Financial Group, Inc., Michael W. Adams, Ronnie Lee Awtry, Karl Don Milstead, Donald H. Stringer, David M. Stover and Saint Clair Ainsley Knight, Jr. The Final Judgments enjoin each defendant from violating the antifraud, securities registration and broker-dealer registration provisions of the federal securities laws and order disgorgement of ill-gotten gains except to the extent that the defendants demonstrated a financial inability to pay. The defendants were ordered to pay approximately \$80,000 in disgorgement and prejudgment interest. Penalties were not imposed based upon the defendants' demonstrated inability to pay.

Also the Commission and the U.S. Attorney for the District of N.H. announced that on October 24, William F. Kane, another defendant in the Commission's action, pled guilty to one count of conspiracy to commit wire and securities fraud based upon the same conduct alleged against Kane by the Commission. On August 14, 1995, the court granted the Commission's motion for partial summary judgment against Kane in the civil action. Kane is free on bail pending sentencing.

The Commission had alleged that the defendants engaged in a fraudulent "boiler-room" offering of unregistered securities that raised more than \$3.5 million from more than 100 investors in 25 states. The only issues remaining in the civil action are the amounts of monetary

relief Kane and five other non-settling defendants will be required to pay. [SEC v. NORMAN L. BROOKS, et al., United States District Court for the District of New Hampshire, C.A. No. 94-167-JD] (LR-14703)

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#### **INVESTMENT COMPANY ACT RELEASES**

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##### **ESC STRATEGIC FUNDS, INC. AND EQUITABLE SECURITIES CORPORATION**

A notice has been issued giving interested persons until November 21, 1995 to request a hearing on an application filed by ESC Strategic Funds, Inc. (the Company) and Equitable Securities Corporation for a conditional order under Section 6(c) of the Investment Company Act to exempt applicants from Section 14(a) of the Act and Rule 18f-2 thereunder. The order would also exempt applicants from certain disclosure requirements set forth in Item 22 of Schedule 14A under the Securities Exchange Act of 1934, Items 2, 5(b)(iii), and 16(a)(iii) of Form N-1A, Item 3 of Form N-14, Item 48 of Form N-SAR, and Sections 6-07.2(a), (b) and (c) of Regulation S-X. The order would permit the sub-advisers approved by the Company's board of directors to serve as portfolio managers for the Company's series without obtaining shareholder approval, and permit the Company to disclose only aggregate sub-advisory fees for each series in its prospectuses and other reports. (Rel. IC-21458 - October 27)

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#### **HOLDING COMPANY ACT RELEASES**

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##### **JERSEY CENTRAL POWER & LIGHT COMPANY, ET AL.**

A supplemental order has been issued authorizing Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, electric public-utility subsidiary companies of General Public Utilities Corporation, a registered holding company, to finance the acquisition of nuclear fuel in amounts of up to \$210 million. (Rel. 35-26400A)

##### **ALLEGHENY POWER SYSTEM, INC.**

A supplemental order has been issued authorizing a proposal by Allegheny Power System, Inc. (APS), a registered holding company, AYP Capital, Inc., a nonutility subsidiary company of APS, and Allegheny Power Service Corporation to form and finance special-purpose subsidiary companies to acquire interests in exempt wholesale generators and foreign utility companies, to provide energy management services and demand side management services, to factor accounts receivable, and to manage the real estate portfolio of APS and its associate companies. (Rel. 35-26401)

## PSI ENERGY INC.

A notice has been issued giving interested persons until November 20, 1995 to request a hearing on a request by PSI Energy, Inc., an electric utility subsidiary of Cinergy Corp., a registered holding company, for an order of the Commission authorizing PSI Energy to enter into a business venture with H. H. Gregg, a retail vendor of household electronics products. Under the terms of the proposed venture, PSI Energy would sell appliances and related extended service warranties, and obtain customer financing for appliance purchases through financial institutions. The current proposal involves a pilot program, extending from November 24, 1995 through December 31, 1996. (Rel. 35-26402)

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## SELF-REGULATORY ORGANIZATIONS

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### PROPOSED RULE CHANGE

The Chicago Stock Exchange has filed a proposed rule change (SR-CHX-95-24) under Rule 19b-4 of the Securities Exchange Act relating to agency crosses between the disseminated exchange market. Publication of the proposal is expected in the Federal Register during the week of October 30. (Rel. 34-46432)

### APPROVAL OF PROPOSED RULE CHANGE

The Commission has approved a proposed rule change (File No. SR-PHLX-95-35) submitted by the Philadelphia Stock Exchange, which amends the PHLX's rules to allow the orders of PHLX member and non-member broker-dealers in USTOP 100 Index (TPX) options to be routed and delivered through the PHLX's Automated Options Market (AUTOM) system. Under the proposal, broker-dealer TPX options orders will not be eligible for AUTO-X, the automatic execution feature of AUTOM. Publication of the approval order is expected in the Federal Register during the week of October 30. (Rel. 34-36429)