

# sec news digest

Issue 84-20

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U.S. SECURITIES AND  
EXCHANGE COMMISSION

January 30, 1984

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## ADMINISTRATIVE PROCEEDINGS

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### RUSSELL G. DAVY SANCTIONED UNDER RULE 2(e)

Administrative Law Judge Irving Schiller filed an initial decision denying the privilege of Russell G. Davy to appear or practice before the Commission.

The Judge held that Davy, a certified public accountant, engaged in improper professional conduct by falsely stating, in a report he issued, that he made an examination of the financial statements of SNG & Oil Energy Company for the fiscal years ended August 31, 1977, 1978, and 1979 in accordance with generally accepted auditing standards and accounting principles. The decision specifies the instances wherein the audit failed to comply with the auditing standards and the manner in which the financial statements failed to conform with accounting principles.

Davy was also found to have wilfully violated and wilfully aided and abetted violations of the antifraud provisions of the securities acts. The decision is subject to review by the Commission on its own motion or on petition of the parties.

### ATLANTIC FINANCIAL MANAGEMENT, INC., OTHERS SANCTIONED

The Commission entered an Order Making Findings and Imposing Remedial Sanctions against Atlantic Financial Management, Inc. (AFM), Tuton, DiIanni & Draizin, Inc. (TDD), Robert A. DiIanni (DiIanni), and Edward H. Tuton (Tuton). DiIanni and Tuton were both officers of investment adviser AFM and broker dealer TDD.

The respondents consented to the following findings by the Commission, which they neither admitted nor denied: (1) that AFM wilfully violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940; (2) that DiIanni and Tuton aided and abetted AFM's violations of the Advisers Act; and (3) that AFM, TDD, DiIanni, and Tuton each wilfully violated the antifraud provisions of the Securities Exchange Act of 1934 and Rule 10b-5.

The foregoing violations were found to have occurred when the respondents concentrated their clients' holdings in the common stock of AZL Resources, Inc., without regard and, in some cases, contrary to the investment objectives of those clients. These violations resulted in losses for all clients of approximately \$4 million.

The respondents also consented to sanctions revoking the registration of AFM as an investment adviser, revoking the registration of TDD as a broker-dealer, and barring DiIanni and Tuton from association with any broker, dealer, municipal securities dealer, investment adviser, or investment company provided that DiIanni may apply for association after 48 months, and Tuton 30 months. (Rel. 34-20580A)

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## CIVIL PROCEEDINGS

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### COMPLAINT NAMES CALZONE MINING COMPANY, INC., OTHERS

The Commission filed a civil injunctive action on January 30 in the U.S. District Court for the Central District of California against Calzone Mining Company, Inc., Henri Berger, MacDonald Gateway Engineering Ltd. (MGE), Guy Chastenat, Lawrence Greene, Henry Holguin, John Woodward, James Geffner, J. Oliver Lovato, J. Oliver & Co., Jordan Potash, Wayne Phares, Emil Wachter, Ronald Alger, Richard Carling, and Rick-Mine Development Corporation (RDC). The complaint alleges violations of: certain antifraud provisions of the securities laws by all defendants; the registration provisions by all defendants except Geffner, Holguin and Woodward; and the broker-dealer registration requirements by Lovato, J. Oliver & Co., Potash, Phares, Wachter and Alger.

Simultaneously with filing the complaint, all of the defendants except Berger, Calzone, Chastenet, MGE, Greene, Wachter and Phares, without admitting or denying the allegations of the complaint, consented to Final Judgments of Permanent Injunction enjoining them as follows: Holquin, Woodward and Geffner from violating the antifraud provisions; and Lovato, J. Oliver & Co., Alger, Carling and RDC from violating the registration and antifraud provisions. Wachter, without admitting or denying the allegations of the complaint, consented to a Final Order ordering him to comply with the registration, antifraud, and broker-dealer registration provisions. (SEC v. Calzone Mining Company, Inc., et al., USDC CDCA, Civil Action No. 84-0485). (LR-10273)

**RECEIVER APPOINTED FOR COLORADO DEVELOPMENT CORPORATION  
AND AMERICAN INVESTOR MARKETING CORPORATION**

The Atlanta Regional Office and the Miami Branch Office announced that on January 13 Judge Sidney Aronovitz, U.S. District Court for the Southern District of Florida, upon the Commission's Motion, appointed Marsha Lyons to be the Receiver for Colorado Development Corporation (CDC) and American Investor Marketing Corporation (AIMC). The Court directed the Receiver to investigate the manner in which Alfred Gellman, former president of CDC, and Charles Gellman, former president of AIMC, conducted the affairs of CDC and AIMC, and to institute appropriate legal actions, if necessary. Ms. Lyons had been appointed as the "Fiscal Agent" for CDC and AIMC in the Final Judgment. At a previous hearing, Ms. Lyons, then the Fiscal Agent, reported to the Court that the defendants mining activities were not commercially feasible. The Court accepted Ms. Lyons' report.

On September 22, 1983, the Gellmans, CDC, AIMC, and others consented, without admitting or denying the allegations in the Commission's complaint, to permanent injunctions against their violations of the registration and antifraud provisions of the securities laws. The Commission alleged the defendants were offering and selling investment contracts in the form of piles of mineral aggregate with a contract to refine it, for the investor, into gold and silver. (SEC v. Colorado Development Corporation, et al., SD FL, Civil Action No. 83-2202-CIV-SMA). (LR-10269)

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## **CRIMINAL PROCEEDINGS**

**RALPH P. LEBKUECHER AND ROBERT S. SPENCER ENTER GUILTY PLEAS**

The Atlanta Regional Office and the U.S. Attorney for the Southern District of West Virginia announced that on December 29, 1983 Ralph P. Lebkuecher and Robert S. Spencer, of Sarasota, Florida, each pled guilty to one count of conspiracy and one count of falsely claiming deductions in their 1976 income tax returns based upon their investment in a coal mining venture. Sentencing is scheduled in Charleston, West Virginia on February 8, and each may be sentenced up to eight years imprisonment and \$15,000 in fines.

The remaining counts of the 31-count joint indictment, which was handed down by Federal grand juries in Charleston, West Virginia and Tampa, Florida, charged that Lebkuecher and Spencer: from the fall of 1976 until 1980, in the formation, promotion and sale of interests in five limited partnership coal tax shelters and another joint venture, had conspired to violate, did violate, and induced others to violate, the tax laws by claiming false tax deductions of over \$8 million, and otherwise causing the filing of false returns; violated the antifraud provisions of the Securities Act of 1933 in the offer and sale of the limited partnership interests; and caused persons to travel in interstate commerce in the execution of their fraudulent scheme.

(U.S. v. Ralph P. Lebkuecher and Robert S. Spencer, Criminal No. 83-20025, USDC SD WVA). (LR-10270)

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## **INVESTMENT COMPANY ACT RELEASES**

**ALPHA CASH MANAGEMENT FUND, INC.**

A notice has been issued giving interested persons until February 21 to request a hearing on an application of Alpha Cash Management Fund, Inc. for an order declaring that it has ceased to be an investment company. (Rel. IC-13737 - Jan. 27)

## EBI EQUITY, INC.

A notice has been issued giving interested persons until February 21 to request a hearing on an application of EBI Equity, Inc., EBI Income, Inc. (Funds), and EBI Cash Management Inc. (collectively, Applicants), for an order exempting Applicants from the provisions of Sections 2(a)(32), 2(a)(35) and 22(c) of the Investment Company Act and Rule 22c-1 to permit the Funds to assess a contingent deferred sales charge under certain circumstances. (Rel. IC-13738 - Jan. 27)

## KOENIG TAX-ADVANTAGED LIQUIDITY FUND, INC.

A notice has been issued giving interested persons until February 21 to request a hearing on an application of Koenig Tax-Advantaged Liquidity Fund, Inc. for an order exempting it from the provisions of Section 22(d) of the Investment Company Act. This will permit Koenig to base its sales load applicable to additional investments by any investor on that investor's cumulative investment in Koenig, including reinvested distributions, if any, but without regard to redemptions of the investor's shares. (Rel. IC-13739 - Jan. 27)

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## HOLDING COMPANY ACT RELEASES

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### THE SOUTHERN COMPANY

A supplemental order has been issued authorizing The Southern Company to issue and sell at competitive bidding up to two million shares of common stock, under an exclusive sales agency agreement, from time to time and in varying amounts through March 31, 1985. Jurisdiction has been reserved, pending completion of the record, over Southern's request to issue and sell an additional 8.5 million shares of common stock. (Rel. 35-23213 - Jan. 27)

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## LISTING, DELISTING AND UNLISTED TRADING ACTIONS

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### UNLISTED TRADING SOUGHT

Notices have been issued giving interested persons until February 16 to comment on the applications of the following stock exchanges for unlisted trading privileges in issues which are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system: The Cincinnati Stock Exchange - ten issues. (Rel. 34-20596); and The Philadelphia Stock Exchange, Inc. - Wrather Corporation, common stock (no par value). (Rel. 34-20597)

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## SELF-REGULATORY ORGANIZATIONS

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### NOTICE OF PROPOSED RULE CHANGE

The New York Stock Exchange, Inc. filed a proposed rule change under Rule 19b-4 (SR-NYSE-84-9) to increase the cost of an NYSE electronic access membership from \$18,500 to \$37,000 effective January 1, 1984. Publication of the proposal is expected to be made in the Federal Register during the week of January 30. (Rel. 34-20603)

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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 information noted below has been taken from the cover page and the facing sheet of the prospectus and registration statement and will appear as follows: Form, Name, address and phone number (if available) of the issuer of the security; Title and the number or face amount of the securities being offered; Name of the managing underwriter (if applicable); Whether the offering is a Rights Offering; File number and date filed; Assigned Branch; If the registration statement is a New Issue; and [S] denoting SHELF REGISTRATION under Rule 415.

(S-18) YELLOW BANKS OIL AND GAS INCORPORATED, 1401 Spring Bank Dr., Owensboro, KY 42301 - 700,000 shares of common stock. The company has been primarily engaged in the acquisition and further development of interests in leaseholds on which proven reserves exist. (File 2-88947-C - Jan. 18) (Br. 4 - New Issue)

- (S-6's) MUNICIPAL INVESTMENT TRUST FUND, THREE HUNDRED TWELFTH MONTHLY PAYMENT SERIES; EIGHTY-SECOND NEW YORK SERIES, One Liberty Plaza, 165 Broadway, New York, NY 10080 - an indefinite number of units of beneficial interest (each Series). Depositors: Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Liberty Plaza, 165 Broadway, New York, NY 10080, Dean Witter Reynolds Inc., Prudential-Bache Securities Inc., Shearson/American Express Inc. (File 2-89079; 2-89080 - Jan. 25) (Br. 17 - New Issues)
- (S-1) EVERGREEN RESOURCES, INC., Suite 900, 425 S. Cherry, Denver, CO 80222 (303) 377-1300 - 26,090,791 shares of common stock. The company is engaged in the exploration for and development, production and sale of oil and gas. (File 2-89087 - Jan. 26) (Br. 3 - New Issue) [S]
- (S-1) II MORROW INC., 2777 19th St., S.E., Salem, OR 97302 (503) 581-8101 - 525,000 shares of common stock. Underwriter: Dain Bosworth Incorporated. The company designs, manufactures and markets state-of-the-art general aviation and marine navigation instruments. (File 2-89097 - Jan. 26) (Br. 8 - New Issue)
- (S-14) BROWARD BANCORP, 2412 North State Road Seven, Lauderdale Lakes, FL 33313 (305) 739-3400 - 186,689 shares of common stock. (File 2-89099 - Jan. 26) (Br. 2 - New Issue)
- (S-1) KIMBARK OIL & GAS 84-A, 84-B, LTD., 1580 Lincoln St., Suite 700, Denver, CO 80203 (303) 839-5504 - 7,500 limited partnership interests, \$1,000 per interest. Underwriters: Kidder, Peabody & Co. Incorporated and Robert W. Biard & Co. (File 2-89101 - Jan. 26) (Br. 10 - New Issue)
- (S-3) PROVIDENCE ENERGY CORPORATION, 100 Weybosset St., Providence, RH 02901 (401) 272-5040 - 200,000 shares of common stock. (File 2-89102 - Jan. 26) (Br. 8)
- (S-14) CITIZENS FINANCIAL SERVICES, INC., 15 South Main St., Mansfield, PA 16933 (717) 662-2121 - 805,902 shares of common stock. (File 2-89103 - Jan. 26) (Br. 2 - New Issue)
- (S-1) PRUDENTIAL-BACHE/ALMAHURST BLOODSTOCK L.P. I, 6915 Harrodsburg Rd., Nicholasville, KY 40365 (606) 885-3326 - 30,000 units of limited partnership interest, \$1,000 per unit. Underwriter: Prudential-Bache Securities Inc. (File 2-89109 - Jan. 26) (Br. 4 - New Issue)
- (S-1) BAYTIDE 1984 OIL & GAS DRILLING & INCOME FUNDS, 415 South Boston, Suite 600, Tulsa OK 74103 (918) 585-8150 - 2,000 preformation limited partnership units. (File 2-89110 - Jan. 26) (Br. 1 - New Issue)
- (S-8) ARMCO INC., 703 Curtis St., Middletown, OH 45043 (513) 425-6541 - 1,500,000 shares of common stock. (File 2-89112 - Jan. 26) (Br. 6)
- (S-8) ENERGAS COMPANY, 301 South Taylor St., Amarillo, TX 79101 (806) 378-3300 - 600,000 shares of common stock. (File 2-89113 - Jan. 26) (Br. 8)
- (S-8) ICX INCORPORATED, 510 East 51st Ave., Denver, CO 80216 (303) 297-9100 - 10,000,000 shares of common stock. (File 2-89114 - Jan. 26) (Br. 3)
- (S-8) AMERICAN EXPRESS COMPANY, American Express Plaza, New York, NY 10004 (212) 323-2000 - 350,598 common shares. (File 2-89115 - Jan. 26) (Br. 2)
- (S-8) INTERAND CORPORATION, 666 North Lake Shore Dr., Chicago, IL 60611 (312) 943-1200 - 462,000 shares of common stock. (File 2-89116 - Jan. 26) (Br. 7)
- (S-3) BANK OF BOSTON CORPORATION, 100 Federal St., Boston, MA 02110 (617) 434-2200 - \$100 million of floating rate subordinated debentures, due 1996. Underwriters: The First Boston Corporation, Goldman, Sachs & Co. and Merrill Lynch Capital Markets. (File 2-89118 - Jan. 26) (Br. 1)
- (S-3) CALUMET INDUSTRIES, INC., 400 North Michigan Ave., Chicago, IL 60611 (312) 726-6171 - 342,000 shares of common stock. The company manufactures lubricating oils, asphalt products and fuel oils. (File 2-89119 - Jan. 26) (Br. 4) [S]