

SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

A brief summary of financial proposals filed with and actions by the S.E.C.



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SEC ISSUES STATEMENT ON REAL ESTATE INVESTMENT TRUSTS. The SEC today issued a statement in response to inquiries with respect to the applicability of the Federal securities laws to real estate investment trusts as defined in a recent amendment to the Internal Revenue Code, (Public Law 86-779, September 14, 1960). This amendment provides substantially the same tax treatment for qualified trusts which are substantially limited to investments in real estate and real estate mortgages as is provided for "regulated investment companies", but it does not amend any of the statutes administered by this Commission. A real estate investment trust may be subject to the provisions of the Federal securities laws, depending upon the circumstances involved in offering its securities for sale, the nature of such securities, and the character of the trust's investments.

The amendment, among other things, requires that, in order to qualify for the special tax treatment provided, the trust's securities must be beneficially owned by 100 or more persons. In view of the number of beneficial owners required, it appears unlikely that the scope of the offering could be so limited as to make available the exemption provided in the second clause of Section 4(1) of the Securities Act of 1933 for transactions by an issuer not involving a public offering. Thus, consideration should be given to Section 5 of that Act which requires that, unless an exemption is available, a registration statement must be filed before a public offering of securities may be made by any means of transportation or communication in interstate commerce or by use of the mails and that such statement must become effective before any sales may be made by such jurisdictional means. Whether any of the exemptions from Section 5 contained in Sections 3 and 4 would be available would depend on the facts and circumstances of each case. In this regard it should be noted that the exemption from the registration of securities under the Securities Act of 1933 provided by Section 3(a)(11) of that Act for certain intrastate offerings is not available to an investment company registered or required to be registered under the Investment Company Act of 1940.

A real estate investment trust, depending upon the nature of its investment portfolio and the nature of the securities it issues, may come within the definition of an investment company as contained in Section 3(a) of the Investment Company Act of 1940, in which event, absent an available exemption or exception, registration of the trust under that Act would be required. One exception from the requirements of the Act which may be applicable to a real estate investment trust is that contained in Section 3(c)(6)(C) of the 1940 Act for a company primarily engaged in the business of "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate" and not "engaged in the business of issuing face-amount certificates of the installment type or periodic payment plan certificates."

Thus, in determining the applicability of the exception contained in Section 3(c)(6)(C), the character of the trust's assets must be considered. In this respect, no question would be raised where a real estate investment trust invested exclusively in fee interests in real estate or mortgages or liens secured by real estate. A trust, however, which also invested to a substantial extent in other real estate investment trusts (as is permitted by the amendment) or in companies engaged in the real estate business or in other securities might not qualify for this exception. Questions in this respect can be determined only on the basis of a consideration of the facts and circumstances in each case.

The other question to be considered in determining the availability of the Section 3(c)(6)(C) exemption is the nature of the securities issued by the trust. A face-amount certificate of the installment type is defined in the Investment Company Act of 1940 as "any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount . . .". A periodic payment plan certificate is defined as "(A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in Clause (A) and the holder of which has substantially the same rights and privileges as those which the holder of securities of the character described in Clause (A) have upon completing the periodic payments for which such securities provide."

Consideration should also be given to whether the broker-dealer registration and other regulatory provisions of the Securities Exchange Act of 1934 are applicable to the real estate investment trust and those who sell its securities.

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For further details, call WOrth 3-5526

Copies of the amendment to the Internal Revenue Code may be obtained for ten cents from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.

PENN FUEL GAS ACQUISITION OF AVIS GAS CLEARED. The SEC has issued an order under the Holding Company Act (Release 35-14311) authorizing Penn Fuel Gas, Inc., Oxford, Pa., to purchase the stock of Avis Gas Company, which is being organized to serve natural gas in the Borough of Avis, Pa.

The proposal for the acquisition was filed by Penn Fuel Gas and John H. Ware, 3rd, an affiliate of Penn Fuel Gas. The service area of Avis will be adjacent to the service area of Jersey Shore Gas & Heating Company, the common stock of which is 100% owned by Ware, and about four miles from the service area of Lock Haven Gas Company, a subsidiary of Penn Fuel. Avis' capitalization will consist initially of 200 shares of \$100 par capital stock, which is to be issued at par to Ware and four other officers of Penn Fuel as organizers of Avis. Penn Fuel will purchase the 200 shares at the same price per share. Avis will use the proceeds from the sale of the 200 shares, together with funds to be advanced to it by Penn Fuel Gas, to construct the necessary transmission and distribution facilities to obtain a natural gas supply from the Leidy Line of Transcontinental Gas Pipe Line Company, a non-affiliate of both Penn Fuel Gas and Ware, and distribute such gas to approximately 115 customers in the Borough of Avis and environs, including Jersey Shore Steel Company. The cost of the facilities to be constructed is estimated at \$205,500.

MIDDLE SOUTH UTILITIES AND LOUISIANA POWER SEFK ORDER. Middle South Utilities, Inc., New York holding company, and its public utility subsidiary, Louisiana Power & Light Company, of New Orleans, La., have applied to the SEC for an order authorizing Louisiana to issue and sell and Middle South to acquire, for \$8,000,000 cash, 2,400,000 additional shares of the authorized but unissued no par common stock of Louisiana, and the SEC has issued an order (Release 35-14310), giving interested persons until November 30, 1960, to request a hearing on the application. Proceeds from the proposed sale of common stock are to be used by Louisiana to pay part of the cost of its current construction program.

FUNDAMENTAL INVESTORS APPLIES FOR EXEMPTION. Fundamental Investors, Inc., Elizabeth, N. J., investment company, has applied to the SEC for an order authorizing the issuance of its shares at net asset value for substantially all of the cash and securities of Van Buren Corporation, an Illinois corporation, and the SEC has issued an order (Release 40-3141) giving interested persons until November 30, 1960, to request a hearing on the application.

Pursuant to an agreement between Fundamental and Van Buren, substantially all of the cash and securities owned by Van Buren, with a value of approximately \$2,632,791 as of July 29, 1960, will be transferred to Fundamental in exchange for shares of the latter's capital stock. The shares acquired by Van Buren are to be distributed to its shareholders, who intend to take such shares for investment with no present intention of distribution or redemption. The number of shares of Fundamental to be delivered to Van Buren will be determined by dividing the net asset value per share of Fundamental in effect at the closing time into the value of the Van Buren assets, with certain adjustments, to be exchanged. Of the assets to be acquired from Van Buren, Fundamental intends to retain in its portfolio, subject to changes in investment conditions and considerations, securities having a value of \$1,763,042 as of July 29, 1960. Approximately \$335,211 of the securities acquired from Van Buren will be sold by Fundamental.

RITTER PROPOSES DEBENTURE OFFERING. Ritter Company, Inc., 400 West Avenue, Rochester, New York, filed a registration statement (File 2-17303) with the SEC on November 17, 1960, seeking registration of \$4,725,000 of Convertible Subordinated Debentures due December 1, 1980, to be offered for public sale through a group of underwriters headed by Lehman Brothers. The interest rate, public offering price and underwriting terms are to be supplied by amendment.

The company is a manufacturer of dental operating units, dental chairs, dental x-ray machines and other dental equipment; hospital and medical sterilizers and lights, operating, examination and treatment tables and other equipment; and components and accessories for medical x-ray machines. Of the net proceeds from the sale of debentures, \$3,500,000 will be used to retire short-term bank borrowings, and the remainder will be used to provide additional working capital and for other general corporate purposes, including provision for inventory build-up in connection with new products and the carrying of increased accounts receivable. The \$3,350,000 short-term bank borrowings were incurred during the past year and were expended approximately as follows: \$1,700,000 were expended in purchasing from an insurance company the Castle plant which previously had been leased; \$850,000 were expended for additional manufacturing facilities, and inventory build-up, at the Castle plant; \$580,000 were expended in general inventory build-up and carrying of additional accounts receivables; and \$220,000 were expended to purchase minority equity interests in two companies with which the company does business.

In addition to certain indebtedness and preferred stock, the company has outstanding 1,171,662 shares of common stock, of which latter stock Gales & Co. owns of record 302,384 shares; A. Ritter Shumway, honorary chairman, owns beneficially 304,472 shares and holds of record 60,568 shares; and F. Ritter Shumway, president, owns beneficially 299,970 shares and holds of record 44,884 shares. Management officials as a group own beneficially 449,928 common shares.

SEC COMPLAINT NAMES H. M. GREEN CORP. The SEC New York Regional Office announced on November 15, 1960 (LR-1834), the filing of a complaint in the United States District Court for the Southern District of New York

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seeking to enjoin H. M. Green Corp., New York City, a registered broker-dealer, Harold Greenberg, president, director, and sole stockholder, and Edward Greenberg, treasurer and director, from further violations of the net capital provisions of the Securities Exchange Act of 1934.

SEC COMPLAINT NAMES INSURED MORTGAGE & TITLE CORP. The SEC Atlanta Regional Office announced on November 15, 1960 (LR-1835) the filing of a complaint in the United States District Court for the Southern District of Florida, at Tampa, seeking to enjoin Insured Mortgage & Title Corporation, Sunniland Development Corporation of Florida, H.E.C. Finance Corporation, and H. E. Corrigan, all of St. Petersburg, from further violations of the registration and anti-fraud provisions of the Securities Act of 1933 in the sale of securities issued in connection with an investment program described by the defendants as the "Corrigan Plan" and variations thereof. The complaint also sought to enjoin Insured Mortgage & Title Corporation from further violating the broker-dealer registration requirements of the Securities Exchange Act of 1934 and requested the appointment of a receiver for Insured Mortgage & Title Corporation and Sunniland Development Corporation of Florida.

INVESTMENT BANKERS OF AMERICA HEARING POSTPONED. Upon the request of counsel for Investment Bankers of America, Inc., of Washington, D. C., and counsel for the Commission's Division of Trading and Exchanges, the Commission has postponed until further order the hearing which was scheduled to be held on November 21, 1960, in the proceedings under the Securities Exchange Act of 1934 on the question whether the broker-dealer registration of the company should be revoked.

AVERY ADHESIVE PRODUCTS FILES FOR OFFERING AND SECONDARY. Avery Adhesive Products, Inc., 2450 Huntington Drive, San Marino, Calif., today filed a registration statement (File 2-17307) with the SEC seeking registration of 250,000 shares of common stock, of which 100,000 shares are to be offered for public sale by the company and 150,000 shares, being outstanding stock, are to be offered for public sale by the holders thereof. Kidder, Peabody & Co. and Wagenseller & Durst, Inc., are listed as the principal underwriters. The public offering price and underwriting terms are to be supplied by amendment.

The company produces pressure-sensitive (self-adhesive) labels and similar products. Of the net proceeds from the sale by the company of the 100,000 shares, approximately \$1,080,000 will be used to redeem the company's presently outstanding 5% preferred stock, and the remainder will be added to working capital.

In addition to 10,519 shares of 5% preferred stock, the company has outstanding 1,350,000 shares of common stock. R. Stanton Avery, chairman of the board, Dorothy D. Avery, wife of R. Stanton Avery, and H. Russell Smith, president and director, each owns 435,000 shares of the common stock, and each proposes to sell 50,000 shares.

TELAUTOGRAPH CORPORATION PROPOSES SUBSCRIPTION OFFER. Telautograph Corporation, 8700 Bellanca Avenue, Los Angeles, Calif., today filed a registration statement (File 2-17308) with the SEC seeking registration of shares of its common stock to be offered for subscription by its common stockholders. The number of shares to be offered, the subscription terms, and the underwriting terms are to be supplied by amendment. Baird & Co., Richard J. Buck & Co., and Chace, Whiteside & Winslow, Inc., are listed as the principal underwriters.

Of the net proceeds from the sale of the common stock proposed to be offered, the company will devote approximately \$400,000 to the development, tooling, inventory and initial production expense relative to producing a new Telescriber compatible and usable with an American Telephone and Telegraph Company analog subset and will devote approximately \$400,000 to the tooling, inventory and other initial expenses of production of new facsimile equipment which its subsidiary Hogan Faximile Corporation is developing for manufacture and sale by the company. The balance of the net proceeds will be used to retire part of the company's outstanding loans from the California Bank, outstanding as of September 30, 1960, in an amount of \$500,000. In addition to indebtedness, the company has outstanding \$2,070,500 of 4-3/4% subordinated convertible debentures due July 15, 1965, and 560,227 shares of common stock.

RUDOLPH V. KLEIN BROKER-DEALER REGISTRATION REVOKED. In a decision announced today (Release 34-6415), the SEC revoked the registration as a broker-dealer of Rudolph V. Klein, doing business as R. V. Klein Company, of 170 Broadway, New York City.

Klein is permanently enjoined by decree of the United States District Court for the Southern District of New York dated April 23, 1958, from violations of the Securities Act of 1933 in connection with the public offer and sale of unregistered stock of Micro-Moisture Controls, Inc. The Commission adopted its hearing examiner's revocation recommendation based upon the Court's injunction, the findings of the Court in the injunction proceedings, including the finding that "registrant knew or in the exercise of reasonable care should have known that he acted as underwriter in effecting through the use of the mails the public sales of a total of 53,000 shares of the common stock of Micro-Moisture," and the finding that Klein had wilfully violated the registration provisions of the Securities Act.