

# SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST



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

Washington, D.C. 20549

(In ordering full text of Releases from Publications Unit, cite number)

(Issue No. 65-7-8)

FOR RELEASE July 13, 1965

**SEC ORDER CITES DIXIE LAND AND TIMBER FILING.** The SEC has ordered administrative proceedings under the Securities Act of 1933 involving a registration statement filed by Dixie Land and Timber Corporation ("Dixie"), of Atlanta, Ga.

Dixie filed the statement with the Commission in September 1964, which proposed the public offering of 3,021,072 shares of common stock at \$1 per share. The statement also covered 1,000,000 shares reserved for option and 60,960 to be reserved for conversion of outstanding bonds. The statement also seeks registration of 5,917,968 outstanding shares of common stock and 762 units of outstanding 6 $\frac{1}{2}$ % First Mortgage Bonds, for the purpose of informing certain purchasers thereof "of the possible loss of the exemption under the Securities Act of 1933 and the possible contingent liability for a refund to them of the price paid for their stock plus 7 per-cent interest from date of purchase."

The proceedings are based upon staff allegations that financial and other information contained in Dixie's registration statement and prospectus is materially misleading, including an alleged overstatement of current assets and total assets by some 86% and 73%, respectively, as well as the asserted failure to disclose certain material facts with respect to Dixie's largest asset.

A hearing will be held on July 26, 1965, commencing at 11:00 A.M., for the purpose of taking evidence on the staff charges and affording Dixie an opportunity to offer any defenses thereto. The hearing will be held in Room 556, Federal Office Building, 275 Peachtree Street, Northeast, Atlanta, Georgia.

**RULES GOVERNING EMPLOYEE STOCK PLANS CLARIFIED.** The SEC today issued a statement (Release 33-4790) designed to clarify the registration requirements of the Securities Act as applied to the purchase of securities of an employer company through an employee stock purchase plan which is substantially equivalent to a customer's account with a broker for the purchase of shares on the open market. The determination of the question of the necessity for registration, the Commission observed, "will turn upon the degree and type of participation" by the employer company - i.e., whether there is sufficient participation to constitute a "solicitation of an offer to buy" within the meaning of Section 2(3) of the Act. Participation by the employer (or its affiliate) will be considered sufficiently limited as not to require registration, the Commission stated, where all communications of a soliciting character are furnished by and in the name of a broker or other agent of the employees, and if the employer company performs no more than the following functions: (1) The employer company or an affiliate announces the existence of the plan; (2) The employer company makes payroll deductions at the request of employees for the purpose of participating in the plan; (3) The names and addresses of employees are made available to the broker or other agent for direct communications by it to such employees regarding the plan. This may take the form of addressing the communication to be sent by the broker or other agent, the inclusion of the broker's communication with the announcement by the employer company, or the holding of an initial meeting of employees at the company's premises; and (4) The employer company or an affiliate pays no more than its expense of payroll deductions and the reasonable fees and charges of the broker or other agent for brokerage commissions and bookkeeping and custodial expenses.

Any deviation from these standards may require registration. Moreover, the anti-fraud provisions of the Federal securities laws apply to the sale of securities, whether or not required to be registered, and, consequently, it is anticipated that employee stock purchase plans not subject to registration will be limited to the securities of companies about which information is generally available.

The Commission also noted that, where the employee plan provides important departures from the ordinary broker-client relationship, such as limitations on the right of the employee to withdraw from the plan or to withdraw securities held in custody, the granting of management discretion in someone other than the employee, the accumulation of sums for material periods of time before investment, the payment of special fees or charges such as a front-end load, etc., a separate security may be created requiring registration under the Securities Act, and the issuer of which may be an investment company required to register under the Investment Company Act of 1940.

**PENN FUEL GAS RECEIVES ORDER.** The SEC has issued an order under the Holding Company Act (Release 35-15277) authorizing Penn Fuel Gas, Inc., Oxford, Pa., to acquire all of the capital stock of Kulpmont Gas Co. (a newly-organized Pennsylvania corporation) for \$20,000 and thereafter to sell to Kulpmont all of the capital stock of Shamokin Gas Co. (a Pennsylvania subsidiary of Penn Fuel) for \$248,125. According to the application, Penn Fuel, which is 83%-owned by John H. Ware, president, presently has 22 gas utility subsidiaries operating in Pennsylvania and one in Maryland and an adjacent portion of Pennsylvania. The price to be paid by Kulpmont for the Shamokin stock will be represented by an open-account indebtedness to Penn Fuel. It is contemplated that, subsequently, Kulpmont will acquire the assets of Shamokin by merger and change its name to Shamokin Gas Company.

**HARMONY ENTERPRISES AND OFFICERS CITED.** The SEC Seattle Regional Office announced July 7 (LR-3269) the filing of a complaint (USDC, ED Wash.) seeking to enjoin Harmony Enterprises, Inc., Norman E. Vincent, president, and James E. Evans, secretary-treasurer, all of Spokane, Wash., from further violations of the Securities Act registration and anti-fraud provisions in the sale of securities of Harmony Enterprises.

OVER

**CONSTITUTION MUTUAL FUND RECEIVES ORDER.** The SEC has issued an exemption order under the Investment Company Act (Release IC-4300) granting an application of the Constitution Mutual Fund, Inc., Los Angeles, Calif., for delayed stockholder approval of an investment adviser contract, election of a board of directors and ratification of the selection of independent accountants. According to the application, the Fund was organized under California law in 1964 and has not commenced operations. It proposes to make a public offering of 400,000 shares of its common stock and until the sale thereof will not have any stockholders. The Fund has entered into a management contract with the firm of Constitution Investment Management Co. and has appointed the firm of William C. Harker, CPA, as independent public accountant. At the first annual meeting of the Fund's stockholders scheduled for December 13, 1965, stockholders will vote on the foregoing matters.

**GEORGETOWN RACING FILES FINANCING PROPOSAL.** Georgetown Racing, Inc., P. O. Box 547, Georgetown, Del., filed a registration statement (File 2-23821) with the SEC on July 9 seeking registration of \$900,000 of 6½% sinking fund subordinated debentures, due 1980, and 90,000 shares of common stock, to be offered for public sale in units consisting of \$50 principal amount of debentures and 5 common shares. The offering is to be made at \$50 per unit through Stroud & Co., Inc., 123 S. Broad St., Philadelphia, Pa., which will receive a \$6-per-unit commission. The company has agreed to reimburse the underwriter for certain expenses up to \$15,000 in connection with the offering. In June 1965, prior to the public offering, the company sold 10,000 common shares at \$1 per share to certain individuals connected with Stroud & Co.

Organized under Delaware law in October 1964, the company intends to engage in the conduct of harness horse racing meets with pari-mutuel betting at Georgetown, Sussex County, Del. The tentative date for commencement of its first meet is November 5, 1965. The net proceeds from this financing will be applied toward the cost of the company's plant, estimated at \$1,025,000 (including \$195,000 for the purchase of land). In addition to indebtedness, the company has outstanding 100,000 common shares, which were sold for an aggregate of \$190,000. Management officials own 90,000 shares of the outstanding stock and, upon completion of this offering, have agreed to purchase an additional 10,000 common shares at \$2 per share. Edward H. Griffiths is president.

**BLUE STAR PRODUCTIONS TEMPORARILY SUSPENDED.** The SEC has issued an order temporarily suspending a Regulation A exemption from registration under the Securities Act of 1933 with respect to a proposed public offering of stock of Blue Star Productions, Inc., 513 Ainsley Bldg., Miami, Fla. The order provides an opportunity for hearing, upon request, on the question whether the suspension should be vacated or made permanent.

Regulation A provides a conditional exemption from registration with respect to public offerings of securities not exceeding \$300,000 in amount. In a notification and offering circular filed with the Commission on April 29, 1965, Blue Star Productions proposed the public offering of 100,000 shares of its common stock at \$2 per share. The Commission asserts in its suspension order that it "has reasonable cause to believe" that the terms and conditions of Regulation A were not complied with by the company in that the offering exceeded, by an amount of \$198,000, the \$300,000 ceiling imposed by the Regulation; a written offer of the stock was made prior to the effective commencing date for the offering; and the notification and offering circular were false and misleading in respect of certain material facts. The order states that there was a materially misleading presentation of facts concerning the identification of the issuer's promoters, the consideration for which the stock was issued to insiders, the filing of the consent and certification by the underwriter and the consent of the underwriter's attorney to be named in the offering circular, the escrow of the issuer's unregistered securities, and the purposes for which the proceeds of the offering were to be used. The order also asserts that the company's assets were over-stated in the amount of \$8,648.25 and that misleading statements were made concerning the companies properties and its proposed business.

**HOLMAN & CO., OTHERS ENJOINED.** The SEC today announced (LR-3270) the entry on July 9, 1965, of a Federal court order (USDC, SDNY) permanently enjoining R. A. Holman & Co., Inc., a broker-dealer located in New York City; Richard A. Holman, president and sole stockholder; Irving Bienenstock (a/k/a Irving Burns), salesman; and Ben F. Harburger, former salesman, from further violations of the anti-fraud provisions of the Federal securities laws in the sale of stock of Pearson Corporation. Another salesman, Henry Nathan Budoff, had previously consented to the entry of a permanent injunction against him.

**SECURITIES ACT REGISTRATIONS.** Effective July 12: Cascade Corp., 2-23666 (Oct 11); The Fontaine Corp., 2-23035 (90 days).  
Effective July 13: The Falk Corp., 2-23720 (Oct 11).

**NOTE TO DEALERS.** The last date or the period of time dealers are required to use the prospectus in trading transactions is shown above in parentheses after the name of the issuer.