

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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COMMISSION ANNOUNCEMENT

"PRIVATE OFFERING" EXEMPTION DISCUSSED. The SEC today made public a policy statement of its Division of Corporation Finance concerning the Section 4(2) exemption from Securities Act registration for "transactions by an issuer not involving any public offering" - the so-called "private offering exemption" (Release 33-5121). Observing that the availability of such exemption turns on the question of "... the need of the offerees for the protection afforded by registration" (See SEC v. Ralston Purina Company, 346 U.S. 119, (1953) and Release 34-4552 of 1962), the statement stressed that it is essential that the issuer take careful precautions to assure that a public offering does not result through resales of securities purchased in transactions meeting the tests set forth in the Ralston Purina case, for if in fact the purchasers do acquire the securities with a view to distribution, the seller assumes the risk of possible violation of the registration requirements of the Act and consequent civil and criminal liabilities.

The statement also discussed the practice whereby issuers procure representations from the initial purchasers that they have acquired the securities for investment (which may not be conclusive as to his actual intent) as well as the practice of many issuers of placing a legend on the securities and issuing "stop-transfer" instructions to the transfer agents. These practices are not to be regarded as a basis for exemption, but have proved in many cases to be an effective means of preventing illegal distributions. The Division will regard the presence or absence of an appropriate legend and stop-transfer instructions as a factor in considering whether the circumstances surrounding an offering are consistent with the Section 4(2) exemption. Accordingly, it urges that issuers stamp or print on the face of certificates or other instruments evidencing restricted securities a conspicuous legend referring to the fact that the securities have not been registered under the Securities Act and may be offered and sold only if registered or if an exemption from registration is available. Issuers also were urged to issue stop-transfer instructions to prevent the transfer of securities in such cases.

DECISION IN ADMINISTRATIVE PROCEEDING

SANCTIONS IMPOSED ON STERMAN & GOWELL. The SEC today announced a decision under the Securities Exchange Act (Release 34-9051) in which it invoked sanctions against the Boston firm of Sterman & Gowell, Inc., its president, Marshall S. Sterman, and its vice president and treasurer, David C. Gowell. Without admitting the violations, they consented to Commission findings that during the period October-December 1968 the firm violated the Commission's record-keeping requirements as well as the credit provisions of Regulation T prescribed by the Federal Reserve Board, and that the two individual respondents failed reasonably to supervise persons under their supervision with a view to preventing such violations. They also agreed to the imposition of sanctions by the Commission, as follows: commencing January 4, the firm shall not act as an underwriter for any offering of securities for a 45-day period and for 60 days shall not (with certain exceptions) request any extensions of time within which to comply with the credit provisions of Regulation T. In addition, Gowell was suspended from association with the firm for 15 business days without compensation, commencing January 4, and Sterman for a like period, commencing January 25; and each was censured for his failure to exercise proper supervision. In support of this settlement of the issues in the subject proceeding, the respondents ^{represented} that by the end of 1969 the firm's books and records were current and in good order and procedures had been instituted to prevent any further credit violations, that they cooperated fully with the Commission's staff during the investigation, and that they have never before been the subject of any disciplinary action by the Commission.

HOLDING COMPANY ACT RELEASES

WHEELING ELECTRIC RECEIVES ORDER. The SEC has issued a supplemental order under the Holding Company Act (Release 35-16950) authorizing Wheeling Electric Company, Wheeling, W. Va., to issue and sell up to \$4,200,000 of notes to ten banks. In March, the Commission had authorized the sale of said notes to nine banks (Release 35-16642). Wheeling will use the net proceeds to repay bank loans, proceeds of which were used for past expenditures in connection with its construction program, to pay part of the cost of its future construction program (estimated at \$2,000,000 for 1971) and for other corporate purposes.

OHIO POWER RECEIVES ORDER. The SEC has issued an order under the Holding Company Act (Release 35-16951) authorizing Ohio Power Company, Canton subsidiary of American Electric Power Company, Inc., to acquire, for \$681,934, 2,032 shares (or 50%) of the outstanding common stock of Windsor Power House Coal Company from West Penn Power Company, Greensburg, Pa. subsidiary of Allegheny Power System. Windsor, which is equally owned by Ohio Power and West Penn, was organized in 1920 for the purpose of owning and operating a coal mine located in Brooke County, W. Va. All of the coal mined at Windsor is sold to Beech Bottom Power Company, Inc., for use at the Windsor Steam Electric Generating Station, operated by Beech Bottom, and owned equally by Ohio Power and West Penn. Prior to consummation of the purchase, Ohio Power proposes to make a cash capital contribution to Windsor of \$186,131, after which Windsor will pay a dividend of \$45.80 per share

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(or a total of \$186,131) out of earned surplus. In addition, Ohio Power proposes to make a \$225,000 open account advance to Windsor, which will in turn pay its existing open account advance of such amount to West Penn.

PENNSYLVANIA ELECTRIC SEEKS ORDER. The SEC has issued an order under the Holding Company Act (Release 35-16952) giving interested persons until January 18 to request a hearing upon an application of Pennsylvania Electric Company, Johnstown subsidiary of General Public Utilities Corporation to increase from \$50,000,000 to \$58,000,000 the amount of short-term notes it may have outstanding at any one time, representing an increase from 9.3% to 10% of the principal amount and par value of other securities at the time outstanding.

COLUMBIA GAS RECEIVES ORDER. The SEC has issued an order under the Holding Company Act (Release 35-16953) authorizing The Columbia Gas System, Inc., Wilmington, Del. holding company, to advance, on open-account up to \$6,750,000 to Columbia Gas of West Virginia, Inc., to which three other subsidiaries recently transferred their retail properties and retail operations in West Virginia, namely, The United Fuel Gas Company, The Manufacturers Light and Heat Company, and Cumberland and Allegheny Gas Company. The West Virginia company will use \$3,200,000 to reimburse United Fuel and Manufacturers for certain short-term gas prepayments and \$3,550,000 to finance construction and other long-term requirements. Columbia Gas also proposes to make additional advances on open-account to United Fuel in the amount of \$11,025,000 to finance its construction and other long-term requirements.

INVESTMENT COMPANY ACT RELEASES

ISL ANNUITY FUNDS SEEK ORDERS. The SEC has issued orders under the Investment Company Act giving interested persons until January 20 to request a hearing upon applications of ISL Variable Annuity Fund A ("Fund A") (Release IC-6308) and ISL Variable Annuity Fund B ("Fund B") (Release IC-6309), both jointly with Investors Syndicate Life Insurance and Annuity Company, Minneapolis, Minn. ("Investors Life"). Investors Life established Funds A and B as separate accounts through which it will set aside investment payments accruing from the sale of individual, tax deferred variable annuity contracts offered by Investors Life. Applicants presently offer three types of individual variable annuity contracts: installment purchase payment deferred annuity contracts, single purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. In connection with the sale of variable annuity contracts, charges are deducted from payments to pay sales and administrative expenses. Applicants request exemption from Section 22(d) of the Act to permit (1) elimination of charges for sales and administrative expenses when the cash surrender values under certain of Investors Life's fixed-dollar annuity contracts are transferred from such annuity to purchase variable annuity contracts, (2) to permit an investor who desires to transfer accumulated amounts from the fixed account to the variable account to be treated in regard to future payments as if the sales and administrative charges paid on fixed annuities and attributable to transferred amounts were paid upon the purchase of variable annuities, (3) to permit the usual decreasing sales and administrative charges on purchases of variable annuities to apply regardless of whether prior purchase payments under combination contracts were allocated to variable annuities or the fixed account, and (4) to permit the beneficiary of a contract purchaser to elect to have the proceeds payable upon the death of the annuitant, including those not derived from the separate account, applied to a variable annuity in lieu of a lump sum payment without deduction of a sales or administrative charge.

ISL VARIABLE FUNDS SEEK ORDER. The SEC has issued an order under the Investment Company Act (Release IC-6310) exempting ISL Variable Annuity Fund A ("Fund A"), ISL Variable Annuity Fund B ("Fund B") and Investors Syndicate Life Insurance and Annuity Co. ("Insurance Co."), wholly-owned subsidiary of Investors Diversified Services, Inc. ("IDS") from provisions of 22(d) of the Act and permitting an offer of exchange. IDS is principal underwriter for six open-end, diversified management investment companies: IDS Progressive Fund, Inc., Investors Mutual Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc. and IDS New Dimensions Fund, Inc. The six funds at present can transfer their accumulated investments to any of the other funds at net asset value. The exemption will permit investors to transfer their accumulated amounts from any of the six funds to Fund A or Fund B for interests in variable annuity contracts without the usual sales charges. The contracts to be purchased will be individual single purchase payment immediate annuity contracts. The exemption would also permit applicants to waive the sales charges but not the administrative charges payable upon purchase of the contracts. State taxes would be paid by the investor.

SCRIPPS-HOWARD INVESTMENT CO. RECEIVES ORDER. The SEC has issued an exemption order under the Investment Company Act (Release IC-6311) permitting Scripps-Howard Investment Co. ("Fund"), Cincinnati closed-end, non-diversified, management investment company, to sell 7,200 shares of stock of New Mexico State Tribune Company ("Tribune") to E. W. Scripps Company ("Scripps") for \$432,000. Fund owns 19.4% of the outstanding capital stock of Tribune. Scripps owns 8.68% of the voting shares of Fund and 77.8% of the outstanding capital stock of Tribune.

EQUITY CORP. GRANTED EXEMPTION. The SEC has issued an order under the Investment Company Act (Release IC-6315), on application of The Equity Corporation, of New York, declaring that Equity has ceased to be an investment company and that its registration as such shall cease to be in effect.

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COURT ENFORCEMENT ACTIONS

COLASURDO, WHORL, McLANEY AND CIPO GUILTY. The SEC announced December 16 (LR-4858) that a Federal court jury in New York had returned a guilty verdict against Lewis L. Colasurdo, Everett A. Whorl, Michael L. McLaney and Anthony Cipo. All defendants were directly or indirectly connected with Crescent Corporation; and the indictment charged that the defendants conspired to violate the disclosure provisions of the Securities Exchange Act. It also charged that Lewis Colasurdo and Whorl filed false and misleading statements for Crescent with the Commission. Three other defendants, John W. Becker, Anthony Colasurdo and Frederick J. Wagner were acquitted.

GERALD LIPSKY ENJOINED. The SEC Chicago Regional Office announced December 18 (LR-4859) that the Federal court in Chicago had enjoined Gerald Lipsky from entering into transactions with Illinois Capital Investment Corporation which would violate Section 17(a) of the Investment Company Act.

SEC COMPLAINT NAMES GUARANTY BOND, OTHERS. The SEC Atlanta Regional Office announced December 22 (LR-4860) the filing of a complaint in Federal court in Nashville, Tenn., seeking to enjoin violations of the net capital, record-keeping and antifraud provisions of the Federal securities laws by Guaranty Bond and Securities Corporation, Henry Jeremiah Huey, Jr., Brooks Thomas Huey and Guaranty Bond Co., Inc.

JAMES MORSE ENJOINED. The SEC Denver Regional Office announced December 23 (LR-4861) that the Federal court in Denver had entered a final judgment, by default, enjoining James Morse of Las Vegas from violating the Securities Act registration provisions in the offer and sale of securities of Airline Valet Baggage, Inc. (a Colorado corporation), formerly Western Plains Oil and Gas Company, doing business as A.A.R.T. Communications Corporation.

SEC COMPLAINT NAMES INVESTMENT/INDICATORS FUND. The SEC San Francisco Regional Office announced December 23 (LR-4862) the filing of a complaint in Federal court in San Francisco, seeking to enjoin violations of the antifraud provisions of the Federal securities laws by Investment/Indicators Fund, a registered investment company, and Investment/Indicators Research & Management, Inc., its investment adviser. The Commission's complaint also seeks the appointment of a receiver for Fund.

RECEIVER NAMED FOR GRAY LINE CORP. The SEC announced December 28 (LR-4863) that the Federal court in New York City had named Arnold Bauman, Esq., of New York City as trustee and receiver for Gray Line Corp. The court's order has been appealed. The receiver is to report by March 2, 1971, whether Gray Line should be liquidated or whether the mandates of the court's order of July 24, 1970, should be carried out.

SECURITIES ACT REGISTRATIONS

PENNCO ENTERPRISES FILES FOR OFFERING. Pennco Enterprises, Inc., 74 Pennsylvania Ave., Brooklyn, N. Y. 11207, filed a registration statement (File 2-39095) with the SEC on December 24 seeking registration of 150,000 shares of common stock. It is proposed to offer the shares for public sale through underwriters headed by Edwards & Hanley Securities, Inc., 1 Whitehall St., New York, N. Y. 10004; the offering price (\$7 per share maximum*) and underwriting terms are to be supplied by amendment. The Edwards firm also will be entitled to purchase, for \$150, 15,000 five-year common stock purchase warrants, the exercise price of which is to be supplied by amendment.

The company and subsidiaries are engaged in the installation, repair and replacement of safety glass in automobiles and trucks and plate glass in commercial and residential buildings; also, in the retail sale of automobile and home stereo players and related equipment. It operates eleven retail outlets in New York City and Long Island. Of the net proceeds of this stock offering, \$100,000 will be used for opening additional branch locations and expanding existing facilities, \$100,000 for diversification into related automobile accessory fields, \$100,000 for possible acquisitions of other firms or companies in related fields, \$155,000 for the repayment of bank notes, and the balance for other corporate purposes. In addition to indebtedness, the company has outstanding 307,500 common shares (with a \$2.07 per share book value), of which Maurice D. Landes, president, owns 58.6% and management officials as a group 85.7%.

HOLIDAY INNS SHARES IN REGISTRATION. Holiday Inns, Inc., 3742 Lamar Ave., Memphis, Tenn. 38118, filed a registration statement (File 2-39097) with the SEC on December 24 seeking registration of 1,000,000 shares of common stock. According to the prospectus, these shares may be issued from time to time in connection with possible acquisitions (including mergers) of the business and assets or shares of capital stock of other companies. The company and its subsidiaries and its licensees constitute the Holiday Inns System of motor inns and restaurants. In addition to indebtedness and preferred stock, it has outstanding 1,233,915 shares of Special Stock and 25,987,552 shares of common stock.

TWO HARRIS BANK FUNDS FILE. Harris Investment Fund, 111 West Monroe St., Chicago, Ill. 60690, filed a registration statement (File 2-39098) with the SEC on December 23 seeking registration of 400,000 units of participation in the Fund. In a separate registration statement (File 2-39099) the Harris Growth Fund seeks registration of 600,000 units of participation. The shares of each Fund are to be offered for public sale initially at \$10 per share (thereafter at net asset value). No sales load or underwriting commission is

involved. Each Fund is a collective or commingled investment account organized by HARRIS Trust and Savings BANK to make the Bank's investment management services available to a larger number of investors. The principal objectives of Investment Fund are to provide reasonable appreciation of capital and a fair and reasonable current income, while the principal investment objective of Growth Fund is long-term capital appreciation. The Bank has complete responsibility for management of the Funds' investments. Each Fund is under the supervision of a committee of three officers of the Bank together with two individuals not affiliated with the Bank. Stanley G. Harris, Jr., senior vice president of the Bank, is committee chairman.

AMERICAN EMPIRE FUND FILES. American Empire Mutual Fund, Inc., 102 North Brand Blvd., Glendale, Calif. 91203, filed a registration statement (File 2-39100) with the SEC on December 23 seeking registration of 200,000 shares of common stock. A newly-organized mutual fund, the company has as its investment objective the long-term growth of capital and income through selective participation in the long-term progress of American business and industry. Its shares will be offered for public sale at net asset value (initially \$10 per share), plus an 8½% distribution charge. Conservative Investment Management Co., Inc., will serve as underwriter and investment advisor. Charles W. Cottle is president.

UNITED TENN. BANCSHARES PROPOSES EXCHANGE OFFER. United Tennessee Bancshares Corporation, 301 East Main St., Johnson City, Tenn. 37601, filed a registration statement (File 2-39103) with the SEC on December 28 seeking registration of 2,795,714 shares of common stock. It is proposed to offer these shares in exchange for all the outstanding common shares (not presently owned by it) of three Tennessee banks, as follows: 4.41 shares for each share of National Bank of Commerce, Memphis; 4.87 shares for each share of First Peoples Bank, Johnson City; and 5.91 shares for each share of Carter County Bank, Elizabethton.

The company is a bank holding company and owns 50.1% of the outstanding common stock of Carter Bank. It has outstanding 235,526 common shares, of which William B. Greene, Jr., president, owns 13.79%, William B. Greene, Sr., a director, 18.32%, W.L.T. Corporation 23.99% and Calvin Houghland 12.99%. Lewis K. McKee is board chairman and chief executive officer.

SECURITIES ACT REGISTRATIONS. Effective December 23: BTA Oil Producers, 2-38771. Effective December 29: AAR Corp., 2-38943; Allegheny Beverage Corp., 2-38716 (40 days); Dana Corp., 2-38921; Gray Advertising Inc., 2-37822; Keene Corp., 2-38969; Louisville Cement Co., 2-38809; Madison Gas and Electric Co., 2-38980; Mytronics, Inc., 2-38998 (40 days); Public Service Co. of Indiana, Inc., 2-38994; The Standard Oil Co., 2-39022 & 2-39023; U. S. Plywood-Champion Papers, Inc., 2-39051.

NOTE TO DEALERS. 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.

*As estimated for purposes of computing the registration fee.

ADDENDUM

CAPITAL OUTLAYS TO RISE. The SEC and the Department of Commerce report (for release in December 31 newspapers) that businessmen are scheduling a rise of 1-1/2 percent in expenditures for new plant and equipment in 1971. 1970 expenditures are estimated to be 6-1/2 percent above 1969. Outlays for next year are expected to total \$81.7 billion compared with \$80.6 billion now estimated for this year and \$75.6 billion in 1969. For further details, see Statistical Release No. 2491.

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