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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MIDDLE SOUTH UTILITIES STOCK OPTION PLAN APPROVED. In a decision under the Holding Company Act announced today (Release 35-14367), the SEC gave conditional approval to a proposal by Middle South Utilities, Inc., a New York holding company, to adopt a plan for the granting of restricted stock options to certain key employees of the Middle South System (Middle South and four operating utility subsidiaries, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc.). The unanimous decision was written by Chairman Gadsby.

Middle South now has outstanding 16,750,000 shares of common stock. Under the plan, which is subject to stockholder approval, Middle South would set aside 120,000 authorized but unissued common shares for issuance upon the exercise of options to be granted under the plan. The plan will be administered by a committee composed of directors of System companies who are not eligible to participate in its benefits. The options will have a term not exceeding seven years, no employee may be granted options for more than 10,000 shares, and no option may be granted after five years from the date on which the plan becomes effective. As filed, the plan provides an exercise price of the options at not less than 95% of the fair market value of the stock on the date the option is granted; but if for 12 consecutive months the average market price for the stock is less than 80% of the original exercise price, then the exercise price may be reduced to not less than 95% of the then fair market value.

One of the conditions to Commission approval of the Middle South proposal is a requirement that it be amended to fix the exercise price of options at not less than 100% of fair market price on the date of granting of the option or on the date of any reduction in the exercise price because of a decline in the average market price, such revisions being considered by the Commission to be necessary to accord "scrupulous fairness to present stockholders." In addition, the plan must be amended so as to provide that not more than 25% of the shares covered by the plan may be optioned to officers of System companies and that the aggregate exercise price of shares which may be optioned to any one person may not exceed 150% of his annual cash compensation.

Under Section 421 of the Internal Revenue Code of 1954, restricted stock options are accorded favorable income tax treatment. The use of such options has been widely adopted as a form of executive compensation and are "commonplace" today. At the hearing on its plan, Middle South presented the testimony of persons experienced in executive placement, including officers of management consulting and executive recruiting firms, of executives of industrial corporations and other utilities and of one of its own directors who represents the largest single block of Middle South stock. It was the unanimous view of these witnesses that the granting of stock options was necessary in order to enable the corporation to compete in the market for top-flight management personnel.

The Commission observed that the question whether such options meet the tests of the Holding Company Act was "a matter of first impression." Since options are not included among the securities authorized by Section 7(c)(1) of the Act, namely, " . . a common stock, a secured bond, a guaranty or a receiver's certificate," the question presented the Commission was whether the issuance of options (which it ruled were properly to be considered securities) may be permitted under Section 7(c)(2)(D). This provision adds to the permitted types of securities those issued "for necessary and urgent corporate purposes of the declarant where the requirements of the provisions of paragraph (1) would impose an unreasonable financial burden upon the declarant and are not necessary or appropriate in the public interest or for the protection of investors or consumers."

The SEC Division of Corporate Regulation had urged, among other things, that no credible evidence had been presented that the declarant has suffered in any way by reason of its inability to use stock options in its executive recruitment and that the financial results in companies not employing this device are equivalent, if not superior, to those of companies which have granted executive stock options.

These arguments were rejected by the Commission, which stated that the evidence indicated that stock options do in fact in many instances constitute a material factor affecting executive personnel recruitment and retention and that: "We are convinced that adequate and fitting executive compensation is a requisite for the financial and operational health of a utility. Consequently, we find that stock options as contemplated in the plan would be issued for necessary and urgent corporate purposes within the meaning of Section 7(c)(2)(D) of the Act." On the question whether the restrictions of Section 7(c)(1) would impose an unreasonable burden on the System and are not required in the interest of investors or consumers, the Commission observed that the stock option problem appears not to have been forseen by the draftsmen of the Holding Company Act and that, in determining whether the issue of such securities would impose an unreasonable burden, the Commission must consider the broad standards of public interest and the interests of investors and consumers set forth in the statute and determine, upon the basis thereof, whether the plan would in any way be inconsistent with the fundamental purpose of the law, which was to eradicate certain abuses from the public utility field. It also commented that it is more important "that we permit an essential industry to operate effectively than that we split dialectic hairs over the meaning of words." The Commission noted in this connection that the Interstate Commerce Commission and the regulatory bodies in some sixteen states have approved stock option plans for utility companies as compatible with the public interest.

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"We cannot find," the Commission concluded, "that the public interest requires us to proscribe the use of restricted stock options by the declarant. Nor do we find any basis for concluding that such use by the declarant would be contrary to the interests of investors or consumers . . . .Since we cannot find that the issue of restricted stock options as set forth in the declaration herein is contrary to the spirit or intent of the Act and since the purposes for which such options are to be issued cannot conceivably be met by the issue of securities of the nature described in Section 7(c)(1), we are constrained to conclude that the requirements of Section 7(c)(1) would, in this context, impose an unreasonable financial burden on the declarant. Furthermore, for the reasons stated, we find that the provisions of Section 7(c)(1) are not necessary or appropriate, in this context, in the public interest or for the protection of investors or consumers." Finally, the Commission rejected the Staff's contention that stock options are not reasonably adapted to the security structure of the Middle South System.

176 EAST 71ST STREET CO. FILES FOR OFFERING. 176 East 71st Street Company ("partnership"), 511 Fifth Ave., N. Y., filed a registration statement (File 2-17571) with the SEC on February 6, 1961, seeking registration of $1,170,000 of assignments of partnership interests, to be offered for public sale in $10,000 units. No underwriting is involved.

The partnership was formed under New York law in January 1961 by Jerome Dansker, Norman Dansker, and Dr. Raphael M. Dansker for the purpose of acquiring fee title to and entering into a net lease of the premises located at 176 East 71st Street, New York, upon which premises 178 E. 71st Corp., the present owner, has agreed to erect a 19 story apartment house. In October 1960 Investors Funding Corporation of New York ("I. F.C.") entered into an agreement to purchase the said land and apartment house to be erected thereon, from 178 E. 71st Corp. ("seller") for $3,400,000, of which $500,000 is payable in cash and the balance by taking the premises subject to a mortgage, such purchase to be consummated after completion of the building. Simultaneously with the execution of the purchase agreement, (1) I.F.C. lent to the seller $600,000, and agreed to lend an additional amount not to exceed $500,000, (2) Guardian Estates, Inc., a wholly owned subsidiary of I.F.C. agreed, under certain circumstances, to lend to the seller an additional $500,000, and (3) I.F.C. agreed to fulfill the Guardian loan obligation in the event of a Guardian default thereunder. In January 1961 the partnership entered into contracts with I.F.C. and Guardian whereby, subject to its obtaining sufficient capital, the partnership will purchase I.F.C.'s rights and assume I.F.C.'s obligations under the purchase agreement and will assume certain of the loan obligations. The partnership will not operate or maintain the property. The partnership and 178 E. 71st Corp., the seller, as lessee, are obligated to execute a net lease covering the entire premises. The lessee will operate, maintain, rent and manage the premises and pay all expenses and costs in connection therewith; pay to the parntership an annual net rental of $62,500; and pay to the mortgagee $240,000 per year as interest and amortization of the first mortgage that is to be placed on the premises. According to the prospectus, the lessee is entitled to assign the lease and contemplates making such an assignment at the time of the closing of the title to a cooperative corporation.

Each of the three partners has contributed $10,000 each to the partnership and will offer from time to time up to $390,000 of assignments of his partnership interest. All money received by the partners from such offering will be used by them to increase their contributions to the capital of the partnership, thereby enabling them to assign partnership interests to the public investors. The proceeds from the sale of the assignments will be used to repay to I.F.C. the $600,000 which it loaned to the seller, pay the purchase price of the property, pay I.F.C. $100,000 for the sale of the purchase agreement and meet the loan obligations of the partnership. Any excess of funds will be returned pro rata to the partners and participants as a return of investment.

WEST TEXAS UTILITIES BOND OFFERING CLEARED. The SEC has issued an order under the Holding Company Act (Release 35-14366) authorizing West Texas Utilities Company, Abilene, Texas, to issue and sell at competitive bidding $8,000,000 of First Mortgage Bonds, Series F, due February 1, 1991. Net proceeds will be used to pay or reimburse the company for a part of expenditures made and to be made for property additions and improvements, including the payment of some $3,600,000 of short-term bank notes incurred for such purpose. The company's 1961 and 1962 construction program is estimated at $24,163,000.

SOUTHERN COMPANY SYSTEM FINANCING CLEARED. The SEC has issued an order under the Holding Company Act (Release 35-14368) authorizing The Southern Company, of Atlanta, to issue and sell at competitive bidding 750,000 shares of common stock. The order also authorizes Southern to apply the net proceeds thereof, estimated at $35,000,000, together with treasury funds to the extent required, to pay $22,000,000 of outstanding bank notes and to make additional common stock investments in subsidiaries, as follows: Alabama Power Company, $6,000,000; Georgia Power Company, $6,000,000; Gulf Power Company, $2,000,000; and Mississippi Power Company, $1,000,000. In addition, the order authorizes the Alabama and Georgia companies to make additional investments of $1,500,000 each in Southern Electric Generating Company. The several subsidiaries will use the additional funds primarily for construction purposes.

PUBLIC SERVICE OF OKLA. PROPOSES STOCK SALE. Public Service Company of Oklahoma of Tulsa, has filed an application with the SEC under the Holding Company Act proposing the sale of an additional 200,000 common shares at $10 per share to its parent, Central and South West Corporation; and the Commission has issued an order (Release 35-14369) giving interested persons until February 23, 1961, to request a hearing thereon. The funds will be used by the subsidiary to finance in part the cost of 1961 property additions.

CERTAIN SBIC STOCK SALES QUESTIONED. The SEC has noted that recently there have been a few instances in which a small business investment company, registered under the Investment Company Act of 1940, proposed to offer to the public common stock, not previously offered to the public, at a per share price substantially in excess of the net asset value of the stock. Since the promoters in these cases paid no more than the net

asset value for their shares, the purpose of the higher offering price appears to be principally to benefit the promoters by the resultant increase in the net asset value of their shares. Unless some other and more legitimate purpose in these situations can be shown, it is the Commission's view that public offerings at such prices may not lawfully be made under the Investment Company Act of 1940.

Section 1 of the Investment Company Act of 1940 makes clear that, so far as feasible, the provisions contained in the Act should be interpreted to prohibit the operation of investment companies in the interests of their officers, directors and other insiders. Section 17(e)(1) makes it unlawful for an affiliated person of a registered investment company, acting as agent, to accept compensation (other than a regular salary or wages from such registered company) from any source for the purchase or sale of any property to or for such registered company except in the course of such person's business as an underwriter or broker. Section 23(a) of the Act states in part that no closed-end investment company shall issue stock for services. Section 48(a) makes it unlawful for any person to do or cause to be done indirectly that which it is unlawful to do directly.

The Commission believes that the foregoing sections prohibit the offering of securities of closed-end investment companies in the manner set forth in the instances described above.

SMALL INDUSTRIAL PLANTS OFFERING SUSPENDED. The SEC has issued an order temporarily suspending a Regulation exemption from registration under the Securities Act of 1933 with respect to a public offering of debentures by Small Industrial Plants, Inc. ("Industrial"), of Farmingdale, N. Y.

Regulation A provides a conditional exemption from registration with respect to public offerings of securities not exceeding $300,000 in amount. In a notification filed May 8, 1958, Industrial proposed the public offering of $150,000 of 8% debentures pursuant to such exemption. The Commission's order asserts that certain terms and conditions of Regulation A were violated, as follows: (1) Industrial sold debentures to about 41 persons without providing them with a copy of an offering circular containing the information required by the Regulation; (2) debentures were sold by use of an advertisement and circular which failed to state from whom an offering circular could be obtained; and (3) the company's officers failed to cooperate with the Commission in supplying requested information and repeatedly ignored communications and correspondence from members of its Staff.

The order provides an opportunity for hearing, upon request, on the question whether the suspension should be vacated or made permanent.

SUSPENSION OF DIRECTOMAT OFFERING PERMANENT. The Commission's order of May 11, 1960 temporarily suspending the Regulation A exemption from registration under the Securities Act with respect to a public stock offering by Directomat, Inc., of New York, has become permanent following withdrawal by the company of its request for a hearing on the question whether the suspension order should be vacated or made permanent. Following a hearing in July 1960, Directomat stipulated that a promoter and controlling person was not disclosed in the company's notification and offering circular, as required by provisions of Regulation A, although that such promoter and controlling person is not now nor has he for a long time been connected with the company.

BRISTOL DYNAMICS FILES FOR OFFERING AND SECONDARY. Bristol Dynamics, Inc., 219 Alabama Avenue, Brooklyn, N. Y., filed a registration statement (File 2-17573) with the SEC on February 7, 1961, seeking registration of 100,000 shares of common stock, of which 70,000 shares are to be offered for public sale by the company and 30,000 shares, being outstanding stock, by Melvin D. Douglas, president. The shares are to be offered for sale at $7 per share on an all or none basis through William, David & Motti, Inc., which will receive a 84¢ per share commission and $20,000 for expenses. The company has agreed to issue five-year warrants at $.001 each to certain officers and employees of the underwriter to purchase an aggregate of 20,000 additional shares at $7 per share.

The company is in the business of designing, engineering, manufacturing, producing, and selling electrical and mechanical assemblies, electronic and missile hardware components and systems, and special tools and fabrications. The $390,000 net proceeds from the company's sale of additional stock will be used as follows: $100,000 to pay a bank loan; $100,000 to expand inventory and purchase raw materials; $100,000 to acquire new and larger facilities for the business; $50,000 for research and development; and the balance for working capital and other corporate purposes.

The company has outstanding 180,000 shares of common stock, of which Douglas owns 162,000 shares and proposes to sell the 30,000 shares, and management officials as a group own 176,400 shares.

EFFECTIVE SECURITIES ACT REGISTRATIONS: February 8: Coral Aggregates Corp. (File 2-16964); Bowl-Mor Company, Inc. (File 2-17251); Leasing Credit Corp. (File 2-17344); General Foam Corp. (File 2-17387); Business Capital Corp. (File 2-17391); Digitronics Corp. (File 2-17415); Maryland Cup Corp. (File 2-17428); Texas Gas Transmission Corp. (File 2-17435).

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