

SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

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



Washington 25, D.C.

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

Issue No. 64-1-4)

FOR RELEASE January 7, 1964

CITIES SERVICE ALLOWANCE OF FEES CLEARED. The SEC today announced its decision under the Holding Company Act (Release 35-14992) with respect to allowable fees for services rendered in connection with the reorganization proceedings involving a plan which eliminated the 1,843,346 publicly-held shares (48.49% minority interest) in the common stock of Arkansas Fuel Oil Corporation, subsidiary of Cities Service Company. Consummation of this plan late in 1960 was the final step in Cities Service's program to effectuate compliance with the integration and simplification requirements of the Act. As a result, Cities obtained an order declaring it not to be a holding company as defined therein. The plan provided for payments to the public shareholder of \$41 per share, or an aggregate of \$75,577,186.

Fee allowances (not previously passed upon) were requested in the aggregate amount of \$1,006,035 (plus expense reimbursements of \$33,523). Principal among these were Guggenheimer, Untermeyer & Goodrich, counsel for the Benedum interests (owner of the largest single minority block of Arkansas Fuel Oil stock), who requested an allowance of \$350,000; Bishop & Hedberg, Inc., adviser to and expert witness for Benedum, \$69,000; and Rich, May & Bilodeau, counsel for members of the Hearn family, Arkansas Fuel Oil stockholders, \$50,000. Five other fee applicants requested amounts ranging from \$750 to \$16,000.

The Commission ruled that the payment of allowances in the amounts of \$135,000 to the Guggenheimer firm, \$140,000 to Bishop & Hedberg, and \$185,000 to the Rich firm would be fair and reasonable and should be paid by Cities. Fees to two other applicants were also allowed so that the aggregate fees authorized totalled \$670,285. The Commission denied the fee request of three applicants.

Copies of the Commission's decision (Release 35-14992) are available upon request.

BROKER-DEALER PARTICIPATION IN PROXY SOLICITATIONS. The SEC today made public an opinion of its General Counsel (Philip A. Loomis, Jr.) with respect to participation by broker-dealer firms in proxy solicitations. The opinion sought to clarify a telegram of November 12, 1963, to the New York Stock Exchange reading: "We should appreciate your advising members that if they transmit proxy material to stockholders whose stock is held in street name, the transmission of any material not supplied by the participants may constitute solicitation in violation of SEC proxy rules."

The General Counsel's opinion stated, in part: ". . . the proxy rules apply to any person - not just management, or the opposition. This coverage is necessary in order to assure that all materials specifically directed to stockholders and which are related to, and influence their voting will meet the standards of the rules. Where, for any reason, there is a general interest in the outcome of a vote of security holders, particularly where there is a proxy contest but not limited to this situation, persons other than the management, or the opposition - if any-, may become involved for various reasons and in various ways in efforts to influence the voting. If the activities of such persons were free of the controls provided by the proxy rules, the objectives of these rules would frequently be defeated. These principles apply to brokers along with all other persons. Brokers are, however, particularly likely to become involved in proxy solicitations both because they may have an interest in the matters to be voted on and because they may have connections with management, opposition, or other participants. There are, however, certain characteristics of the brokerage business which raise particular questions in relation to proxy solicitation. These are primarily as follows: First, brokers may feel obligated to furnish advice to customers as to how they should vote, just as they furnish advice to customers with respect to other matters pertinent to their investments. In the second place, brokers in the ordinary course of their business issue substantial amounts of written material which discuss particular securities and particular corporations. Where a proxy solicitation is in progress a question may arise as to whether this material is, or is not, soliciting material. In the third place, brokers may engage in solicitations with respect to securities owned by customers which are carried in the name of the broker, either in obedience to exchange rules or otherwise."

After discussing these characteristics in some detail, the General Counsel concluded: "In summary, the transmission of material to security holders by a broker while proxy solicitation is in progress may or may not constitute a solicitation requiring compliance with the proxy rules, depending upon whether the material is of a nature calculated to influence the voting. This, in turn, depends both upon the content of the material, upon the conditions under which it is transmitted, and upon surrounding circumstances. In the context of a proxy contest where security holders are confronted with a choice as to which side they will support and where their proxies are not likely to be given in a routine manner, material originating with brokers is more likely to constitute proxy solicitation. Absent a contest, the ordinary distribution of research reports, market letters, etc., which do not refer to any question to be decided by the security holders, is unlikely to constitute solicitation unless sent out with proxy material or otherwise in a manner likely to cause it to be considered by a security holder in connection with his voting decision. Even where there is a contest, ordinary investment advisory material distributed in the ordinary course of business is not necessarily a solicitation but more care is called for. A broker who transmits proxy materials for others is engaged in solicitation and must stay within the limitation of exemption granted by Rule 14a-2b unless he complies with the requirements applicable to persons participating in a solicitation." (Release 35-7208)

OVER

PERSONNEL ASSIGNMENTS LISTED. Chairman William L. Cary of the SEC today announced staff appointments, as follows: (1) Warren E. Blair, reassignment from the position of Assistant Regional Administrator in New York to that of Hearing Examiner; Arthur Goldman, reassignment to the Assistant Regional Administrator position vacated by Mr. Blair; and Samuel Binder, appointment as Hearing Examiner.

Mr. Blair received his law degree from DePaul University in 1940, joined the Commission's staff in 1947, and has since participated actively in its various law enforcement activities. He became Assistant Regional Administrator in August 1960. Mr. Goldman joined the Commission's staff in 1940 and since September 1962 has served as Special Trial Counsel in the New York Regional Office. He is a graduate of St. Johns University in Brooklyn (LL.B. 1936, LL.M. 1937). During the period 1942-52, Mr. Binder served as an attorney on the staff of the Division of Corporation Finance of this Commission. He then became a Hearing Examiner, serving about one year with the National Labor Relations Board and the past ten years with the Federal Power Commission. Mr. Binder is a graduate of the New York University Law School (J. D. 1928).

DISMISSAL OF THREE ACTIONS APPROVED. The SEC today announced a decision (Release 34-7207) dismissing administrative proceedings which charged a failure of the following broker-dealer firms to file 1962 reports of financial condition: Larry Richards, Inc., 2322 Hudson Blvd., Jersey City, N. J.; Clarence R. Carter dba Carter & Co., 80 Division Ave., Summit, N. J.; and Martin Karduna and Abraham Karduna dba American Planning Co., 189 Montague St., Brooklyn, N. Y. Staff counsel had filed motions to dismiss these proceedings because it was satisfied from the records that the required reports had been prepared for the two registrants whose accountants testified to that effect, and because of testimony that the reports of all three registrants had been mailed to an office of the Commission. Moreover, the three firms, upon being notified that such reports had not been received, filed the required reports. Accordingly, the Commission dismissed the proceedings.

CORPORATE TRUST SHARES EXEMPTED. The SEC has issued an order under the Investment Company Act (Release IC-3889) declaring that Corporate Trust Shares, of New York, has ceased to be an investment company. An earlier order of the same nature (Release IC-3825) was cancelled by reason of the failure to give notice thereof in Federal Register.

MIDWEST INVESTORS FUND, INC. SEEKS ORDER. Midwest Investors Fund, Inc., 1200 First National Bank Bldg. Minneapolis, has filed an application under the Investment Company Act for an order declaring that it has ceased to be an investment company; and the SEC has issued an order (Release IC-3890) giving interested persons until January 27 to request a hearing thereon. According to the application, pursuant to the terms of an Agreement and Plan of Reorganization and Exchange approved by the shareholders of Midwest on June 4, 1963, (1) all of the assets of Midwest were transferred to Federated Funds, Inc. and (2) all of the outstanding shares of Midwest have been exchanged for shares of Federated (with the exception of 3,290 shares held by four shareholders who have been requested to send in their shares).

PAUL E. MCDANIEL SENTENCED. On December 30th, in the United States District Court in Houston, Paul E. McDaniel of Houston was sentenced to 18 months in prison and fined \$14,100 following his conviction of fraud in the sale of securities (LR-2812).

ZALE JEWELRY FILES FOR SECONDARY. Zale Jewelry, 512 South Akard St., Dallas, filed a registration statement (File 2-22002) with the SEC on January 6 seeking registration of 153,636 outstanding shares of common stock to be offered for public sale by the holders thereof through underwriters headed by Merrill Lynch, Pierce, Fenner & Smith, 70 Pine St., New York City and Eppler, Guerin & Turner, Inc., 1600 Fidelity Union Tower, Dallas. The offering price (\$24 per share maximum*) and underwriting terms are to be supplied by amendment.

The company is the outgrowth of a single retail jewelry store. It operates, directly or through wholly owned subsidiaries, a chain of retail jewelry stores in the United States consisting of 328 stores and leased departments located in 36 states. The company has outstanding 1,843,730 shares of common stock and 1,649,057 shares of Class B common (convertible on a share for share basis into common stock). Management officials own 538,980 shares (29.2%) of the common and 923,874 shares (57.5%) of the Class B common. The prospectus lists 14 selling stockholders and states that after the proposed sale they will continue to own 177,077 shares of common stock and 587,767 shares of the Class B common. Morris B. Zale is chairman of the board and Ben A. Lipshy is president. Three officials and one other shareholder propose to sell 25,000-share blocks each.

SECURITIES ACT REGISTRATIONS. Effective January 4: U. S. Plywood Corp. (File 2-21955); Effective January 5: U. S. Plywood Corp. (File 2-21959); Withdrawn January 6: Urethane of Texas, Inc. (File 2-19778).

*As estimated for purposes of computing the registration fee.

---oooOooo---