

6. At the present time, the Applicant's shares are beneficially owned by fewer than one hundred persons in the United States, and the Applicant is not making, and does not presently propose to make, a public offering of its securities in the United States. The Applicant intends, however, to raise additional capital, which may include another offering of American Depository Shares to additional United States investors through a further private placement.

Applicant's Legal Analysis

1. Section 3(a)(1) defines "investment company" to mean, as here relevant, any issuer that holds itself out as being engaged primarily in the business of investing or trading in securities. Because the Applicant is listed on the LSE as an "investment company," it arguably has held itself out as an investment company within the meaning of section 3(a)(1).²

2. Applicant requests an exemption from all provisions of the Act pursuant to section 6(c). Section 6(c) provides, as here relevant, that the SEC, by order upon application, may exempt any person from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant submits that the requested relief meets the exemptive standards established by section 6(c). It asserts primarily that it is engaged through the Subsidiaries in the business of an insurance company, and does not operate as an investment company for purposes of the Act. In this regard, even though the Applicant's memorandum of association gives it the power to carry on the business of both an investment company and an insurance business, it is not treated as an investment company under the U.K. Companies Act or as an investment trust for tax purposes. Similarly, the Applicant is not treated as a collective investment scheme or an authorized unit trust scheme under the U.K. Financial Services Act or as an undertaking for collective investment in transferable securities ("UCITS") under directives of the European Union. In addition, the daily trading price of the

Applicant's shares on the LSE is quoted in the Financial Times under the caption "Insurance" and not "Investment Trusts." While the 1994 prospectus for the Applicant's shares introduced it as an investment company, the stated purpose of the offering was to enable investors to underwrite insurance with limited liability through Lloyd's syndicates managed by Wellington Underwriting Agencies Limited. Based on the foregoing, Applicant argues that the Act's purpose would not be served by applying it to the Applicant merely because it is listed, for reasons of convenience, as an investment company on the LSE.

4. Applicant also submits that exemptive relief would be consistent with the purposes intended by specific policies and provisions of the Act. Section 3(c)(3) of the Act excludes from the definition of "investment company" domestic insurance companies. Rule 3a-6 provides that foreign insurance companies are also not subject to the provisions of the Act. Applicant represents that its Subsidiaries fall within the requirements of rule 3a-6.³ Applicant notes that United States holding companies for insurance companies are excepted from the definition of investment company by section 3(c)(6). Because of its status as a holding company whose only operations are the ownership of the Subsidiaries, the Applicant is a foreign insurance company holding company. The SEC, upon adopting rule 3a-6, made it clear that foreign insurance company holding companies should be treated under the Act on the same basis as United States insurance company holding companies.⁴

Applicant's Conditions

Applicant agrees that any order of the SEC granting the exemptive relief requested by the application may be made subject to the following conditions:

³ Rule 3a-6 defines "foreign insurance company" as an insurance company organized under the laws of another country that is regulated as such by that country's government, that is engaged predominantly in writing or reinsuring insurance agreements of the type specified in section 3(a)(8) of the 1933 Act, and that is not operated for purposes of evading the provisions of the Act. Applicant intends to rely on an opinion of counsel to the effect that its Subsidiaries are exempt from registration under the Act because they are foreign insurance companies within the meaning of the rule. Applicant does not request SEC review or approval of counsel's opinion, and acknowledges that the SEC takes no position as to its availability.

⁴ See Investment Company Act Release No. 18381 (Oct. 29, 1991).

1. No Subsidiary will be an "investment company" as defined by the Act.

2. Applicant will continue to operate, either directly or indirectly, only in the business of insurance.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 8, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70-8733)

The Southern Company ("Southern"), 270 Peachtree Street, N.W., Atlanta, Georgia 30346, a registered holding company, and its subsidiaries, Mobile Energy Services Holdings, Inc. ("Mobile Energy"), Southern Electric International, Inc. ("Southern Electric"), SEI Holdings, Inc. ("Holdings"), Southern Electric Wholesale Generators, Inc. ("Domestic Holdings"), and SEI

² The Applicant's assets consist entirely of securities of the wholly-owned Subsidiaries, which in turn hold assets in the form of a Lloyd's deposit that is invested in securities. Thus, the Subsidiaries, and consequently the Applicant itself, would be deemed investment companies under section 3(a)(3), except for, as discussed below, the Subsidiaries' status as foreign insurance companies under rule 3a-6.