

from any provision of the Advisers Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

2. Notwithstanding the general restrictions of section 205(a)(1), an investment adviser required to register under the Advisers Act may enter into a performance-based compensation agreement if such contract meets the requirements of rule 205-3 and if each advisory client meets certain net worth and sophistication requirements set forth in the rule. With specific reference to a private investment company such as applicant, section (b)(2) of rule 205-3 provides that each shareholder must either have at least \$500,000 under management of the investment adviser or have a net worth at the time the performance-based compensation agreement is entered into of more than \$1,000,000.

3. The client eligibility requirements of rule 205-3 reflect the SEC's recognition that such requirements were a means of determining client capacity to understand and bear the risks associated with performance fee contracts. Applicants state that the considerable investment expertise and experience of the persons comprising its board of directors, Investment Committee and senior management group will enable applicant to more than adequately understand and assess the method of compensation and attendant risks with respect to any proposed performance-based compensation agreement.

4. Applicant believes that there is a strong commonality of interest between the members of the board of directors and Investment Committee and both the legal and beneficial owners of Unqualified Shareholder stock. There is a close family relationship between the beneficial owners of Qualified Shareholder stock and both the legal and beneficial owners of Unqualified Shareholder stock. By reason of the ownership of a majority of applicant's stock by the Qualified Shareholders and their ability to elect the board of directors (which, in turn, appoints members to the Investment Committee), the analysis of the merits and risks of entering into any performance fee agreement will be made for the benefit and protection of the Unqualified Shareholders my individual Qualified Shareholders who are close family members of the Unqualified Shareholders (or of the ultimate beneficial owners thereof, in the case of trusts and custodianships), and by other

directors elected by the Qualified Shareholders. Further, the Qualified Shareholders making the investment decisions for applicant have substantial assets invested in applicant and are, therefore, subject to the same risks as the Unqualified Shareholders. Thus, applicant believes that granting the requested 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 Advisers Act.

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

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-21525; 812-9694]

Pitcairn Group L.P.; Notice of Application

November 20, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pitcairn Group, L.P.

RELEVANT ACT SECTION: Order requested under section 6(c) for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant is a privately-held investment company substantially owned and controlled by one family and certain persons and entities affiliated with, or otherwise related to, members of that family. Applicant seeks an exemption from all provisions of the Act.

FILING DATES: The application was filed on July 28, 1995, and amended on October 10, 1995 and November 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 19, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicant, Suite 3000, One Pitcairn Place, 165 Township Line Road, Jenkintown, Pennsylvania 19046.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942-0565, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Delaware limited partnership that elected to be regulated as a business development company under section 54 of the Act, was organized in 1986 as a vehicle for private investments for the Pitcairn family. Applicant was capitalized with assets derived from the liquidation of the Pitcairn Company, a Delaware corporation formed in 1923 by members of the Pitcairn family (the "Family") to hold and manage the estate of John Pitcairn, one of the founders of Pittsburgh Plate Glass Company. Limited partnership interests ("Units") in applicant were distributed to the former shareholders of the Pitcairn Company.

2. Over 97% of the Units are held by or for the benefit of Family members, related trusts, and Family-Related Organizations (as defined below).¹ Approximately 22.7% of the Units are owned directly by individual Family members and 69.4% are held in various irrevocable trusts crated between the years 1923 and 1979 primarily by John Pitcairn's three sons and their spouses for the benefit of their descendants. In addition, 5.6% of the Units are owned directly by eight religious organizations, academic institutions of foundations created or affiliated with and supported by the Family (the "Family-Related Organizations").² None of the individuals, trust, or Family-Related

¹ The Units are registered under section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), although there are fewer than 300 holders of record, so Pitcairn Group can maintain its election to be treated as a business development company under section 54 of the Act. If the SEC grants the relief requested by this application, applicant intends to deregister the Units under section 12(g)(4) of the 1934 Act.

² All of the Family-Related Organizations that own Units were shareholders of the Pitcairn Company and had received that stock as the result of gifts from Family members over many years.

Organizations currently owns in excess of 10% of the Units.³

3. Applicant has three general partners. Two of these are individual members of the Family, who have served since inception. The third general partner is Pitcairn Company ("Pitco"), applicant's managing general partner since April 17, 1990.

4. Pitco, a Pennsylvania corporation wholly-owned by applicant, is a registered investment adviser and serves as investment adviser to applicant. Pitco (directly, and through its wholly-owned subsidiary Pitcairn Trust Company) provides advisory, management, supervisory, and administrative services to applicant (subject to the supervision of the individual general partners of applicant). Applicant has no employees of its own.

5. Pitcairn Trust Company ("Trustco") is a state chartered trust company. Trustco primarily serves as co-trustee of personal trusts created by and for the benefit of members of the Family. Trustco maintains a staff of professional investment managers to oversee direct investments by trust accounts. Trustco provides income tax planning and administration, financial planning, trust and estate administration, asset allocation, investment advice, and miscellaneous financial services to Family members.

6. There are currently nine members of the board of directors of Pitco: six are Family members who beneficially own limited partnership interests in applicant; one is the President of Pitco (who, as a non-Family director, is elected annually by the Board of Directors); and the remaining two are non-Family. There are currently nine members of the board of directors of Trustco: six are Family members; two are non-Family senior officers of Trustco; and one is a retired, non-Family former senior officer of a subsidiary of The Pitcairn Company.

7. Representation of the boards of Pitco and Trustco historically has been drawn from all three lines of descendants of John Pitcairn, ensuring that the views of each line are heard and that the Family's collective interests are served. In 1990, the Family adopted a Family Governance Structure Charter (the "Charter") that defines the role of Family leaders, as directors of Pitco, in establishing policies and overall direction for the Family entities and

communicating information directly to Family members.⁴

8. Applicant's Units have never been offered or sold to the public. During the past nine years (except for the redemption of Unites by applicant and transfers in connection therewith), Units have been transferred solely to Family members and/or related trusts. Since 1986, there have been only eight sales between Unit holders. There is no trading market for the Units.

9. In May, 1995, applicant made a private offering of additional Units to replace capital used to redeem approximately 39% of the outstanding limited partnership interests of a portion of the Family that no longer wished to be clients or owners of applicant and its related entities.⁵ Applicant raised approximately \$5.3 million from existing Family members and from trusts that benefit descendants of John Pitcairn.

10. The ownership of Units is likely to remain entirely within the Family for three reasons. First, the terms of governing trust instruments are exclusively for the benefit of present and/or future generations of Family members (subject to the rule against perpetuities). Second, the Units are not freely transferable. Limited partners only can sell or otherwise dispose of their Units or portion thereof pursuant to the terms of the partnership agreement. Third, the admission of new (substitute) limited partners requires the consent of Pitco as the managing general partner, regardless of whether the transfer results from a voluntary transfer or assignment, from death, or by operation of law. Inasmuch as Pitco effectively is controlled by the Family, the Family controls, and will continue to control, access to membership in applicant.

11. To ensure that Units will remain Family-controlled and privately-owned, a majority in interest of applicant's limited partners have approved an amendment to the partnership agreement to provide for a future

⁴ The Charter sets forth the process for selecting the candidates for the board of directors of Pitco. A nominating committee proposes candidates for election to Pitco's board of directors. Any other Family member may run for a board position after receiving the endorsement of three Family members. A straw vote of Unit holders is taken and the results, which are only advisory, are relayed to applicant's general partners. Applicant's general partners then elect the Family member directors of Pitco. Non-Family directors of Pitco are selected annually by applicant's individual general partners, after considering the views of the Family directors. The directors of Pitco, in turn, elect the directors of Trustco.

⁵ See Investment Company Act Release Nos. 20982 (March 31, 1995) (notice) and 21031 (April 26, 1995) (order).

restriction on the transferability of Units. The amendment provides that the consent of Pitco, as managing general partner, must be withheld for any transfer or assignment of Units to other than Family members, trusts for their benefit, their estates, any entity wholly-owned by one or more of them, or to any partner of record as of October 13, 1995 (the "Permitted Transferees") unless (i) Pitco in its sole and absolute discretion, grants its consent and (ii) the proposed transfer or assignment does not result in greater than 10% of the Units being owned directly or indirectly by or for the benefit of persons who are not Permitted Transferees. The amendment was approved at a meeting held on November 10, 1995 (the "Partnership Meeting").⁶ Applicant believes that this amendment will be effective in maintaining its essentially private nature.

12. At the Partnership Meeting, a majority in interest of applicant's limited partners approved the withdrawal of applicant's election to be treated as a business development company. If the SEC grants the relief requested by this application, applicant will withdraw its election to be regulated as a business development company under the Act.

Applicant's Legal Analysis

1. Prior to 1986, applicant relied on section 3(c)(1) of the Act for an exemption from registration under the Act. Section 3(c)(1) excepts from the definition of "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making, and does not presently propose to make, a public offering of its securities. With the increase in Family members so that applicant's beneficial owners exceeded 100, however, applicant could no longer rely on the exemption and elected business development company status under the Act.

2. A business development company is a closed-end investment company whose principal activity is investing in and providing managerial assistance to small, growing businesses. As a business development company, applicant must invest 70 percent of its assets primarily in "eligible portfolio companies" as defined in section 2(a)(46) of the Act.

3. Applicant has found that continued compliance with the obligations imposed on business development companies is burdensome. In addition

⁶ The effectiveness of the amendment is dependent upon the SEC granting the relief requested by this application.

³ Applicants believe that the actual number of individual beneficial owners (excluding Family-Related Organizations) who have an economic interest in Units, either directly or as an income beneficiary of trusts, could be deemed to be 148.

to the time and costs associated with 1934 Act reporting obligations necessitated by applicant's status as a business development company, the investment limitations in section 55 of the Act make it difficult to achieve adequate diversification of investments by applicant in privately held companies or partnerships.

4. Applicant asserts that section 3(c)(1) evidences the intention of Congress to exclude "private" investment companies from the purview of the Act. Under section 6(c) of the Act the SEC may exempt private investment companies that have more than 100 beneficial owners.⁷ Applicant contends that its request for a conditional order under section 6(c) is consistent with relief granted to other private investment companies substantially owned and controlled by a single family.⁸ Applicant asserts that it is a private investment vehicle not intended to be within the scope of the Act and that the protections of the Act are not necessary for investors in family-sponsored enterprises such as applicant.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or 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. Applicant believes that the requested exemption meets these standards.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. Applicant will continue to provide each investor annual financial statements audited by an accounting firm of recognized national standing.

2. Applicant, through its managing general partner, shall neither admit as a new investor, nor permit the assignment or transfer of any interest therein to any individual or entity, if such admission, assignment or transfer would cause applicant to fail to be 90% owned by or for the benefit of Family members, trusts for their benefit, their estates, any entity wholly-owned by them, and Family-Related Organizations.

3. Applicant shall not have as a general partner a person or entity other than Pitco, a Family member, an entity controlled directly or indirectly by Family members, or an affiliated person of applicant.

4. Applicant shall not knowingly make available to any broker or dealer registered under the 1934 Act any financial information concerning applicant for the purpose of knowingly enabling such broker or dealer to initiate any regular trading market in any Units.

5. Pursuant to section 54(c) of the Act, applicant will file a notification of withdrawal of election to be subject to sections 55 through 65 of the Act, as soon as practical (but in no event later than 120 days) after receiving the order requested by this application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-28929 Filed 11-27-95; 8:45 am]

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[Release No. 35-26415; International Series Release No. 888]

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

November 21, 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 December 18, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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.

Northeast Utilities (70-7883)

Northeast Utilities ("Nu"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a), and 10 of the Act and rule 54 thereunder.

By order dated November 18, 1991 (HCAR No. 25411) ("Order"), the Commission approved the issuance and sale of up to 11 million NU common shares, \$5.00 par value, to an employee stock ownership plan ("ESOP") trust to be added to a NU system 401(k) plan ("Plan").

In accordance with the terms of the Order, the Plan, and the ESOP trust agreement, the ESOP trustee votes allocated ESOP shares as directed by the employee participants who beneficially own the allocated shares, and abstains from voting allocated ESOP shares for which no direction from the beneficial owner is received. No change in the voting of allocated ESOP shares is contemplated.

However, under the Order the ESOP trustee votes the unallocated shares in the same proportion of yes and no votes and abstentions as it votes the allocated shares. This results in a large number of abstentions of unallocated ESOP shares. The nonvoted unallocated shares represented almost 3 percent of NU's shares outstanding at the time of its last annual meeting on May 23, 1995.

NU now proposes to amend the Plan and the ESOP trust agreement to modify the manner in which the ESOP trustee votes the unallocated shares held in the ESOP trust. Under the proposed change, allocated ESOP shares would still be voted in accordance with participant instructions, including abstaining from voting allocated ESOP shares for which no instructions are received. However, unallocated ESOP shares would be voted "yes" or "no" in the same proportions as allocated ESOP shares for which voting instructions are received.

In a "no-action" letter dated March 25, 1992, the Commission staff analyzed the trust holdings of NU common shares under the Plan, including the voting requirements for the ESOP shares, and concluded that it would not recommend any enforcement action under the Act that would result in the Plan or the bank trustee under the Plan being deemed to be a "holding company," as defined in section 2(a)(7)(A) of the Act, or an "affiliate," as defined in section 2(a)(11)(A) of the Act, on account of the

⁷ See *Maritime Corporation*, 9 SEC 906, 909 (1941).

⁸ See, e.g., *Bessemer Securities Corporation*, Investment Company Act Release Nos. 18529 (Feb. 5, 1992) (notice) and 18594 (March 3, 1992) (order); *Richardson Corporation*, Investment Company Act Release Nos. 16566 (Sept. 22, 1988) (notice) and 16606 (Oct. 21, 1988) (order); and *5600, Inc.*, Investment Company Act Release Nos. 16004 (Sept. 25, 1987) (notice) and 16067 (Oct. 21, 1987) (Order).