and with the general purposes of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4858 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26673]

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

February 21, 1997.

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 March 17, 1997, 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.

Southwestern Electric Power Company, et al. (70–8987)

Southwestern Electric Power Company (''SWEPCO''), 428 Travis Street, Shreveport, Louisiana 71156, Public Service Company of Oklahoma (''PSO''), 212 E. 6th Street, Tulsa, Oklahoma 74119, and West Texas Utilities Company (''WTU'' and, collectively with SWEPCO and PSO, the ''Applicants''), 301 Cypress Street, Abilene, Texas 79601, each an electric utility subsidiary of Central and South West Corporation, a registered holding company, have filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder.

The Applicants propose to lease to nonaffiliated third parties excess space in the Applicants' respective office buildings and other properties owned or leased by the Applicants, but not currently used in the normal course of their operations.

The properties to be leased shall include the following types of properties: office space in buildings currently owned or leased by the Applicants; area or local offices, which typically consist of less than 10,000 square feet; service centers which include office and warehouse facilities and which typically consist of less than 20,000 square feet; district or division offices, which typically consist of less than 25,000 square feet; excess capacity in the Applicants' training facilities; miscellaneous facilities which are being held for future use or sale and which typically consist of less than 10,000 square feet; and other improved and unimproved land.

All rental payments from nonaffiliated third parties for excess space are, and in the future will be, accounted for as rent from property devoted to electric operations for the Applicants that own the relevant building or property.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4859 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22524; International Release No. 1057; 812–10278]

Randgold and Exploration Company Limited, Inc.; Notice of Application

February 21, 1997.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Randgold and Exploration Company Limited, Inc.

RELEVANT ACT SECTIONS: Applicant seeks an order under sections 2(b) (9) and 3(b) (2) of the Act, or alternatively, under section 6(c) granting an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it controls certain companies, notwithstanding that it owns less than 25% of the voting securities of these companies, and declaring that applicant is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. In the alternative, applicant seeks an order exempting it from all provisions of the Act.

FILING DATES: The application was filed on July 26, 1996, and amended on November 12, 1996.

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 March 18, 1997, and should be accompanied by proof of service on the 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, 5 Press Avenue, Johannesburg 2025, P.O. Box 82291, Southdale 2135, South Africa.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, 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 application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a South African corporation, is a foreign private issuer whose common shares are listed on the Johannesburg Stock Exchange. Applicant is engaged in the gold mining and exploration business in Africa. Applicant has a current market capitalization of over R985 million (US $229 million) and reported net earnings of R35 million (US $8 million) for the last four fiscal quarters ended June 30, 1996. Applicant, together with its direct subsidiaries, has over 160 employees worldwide and just over 40,000 employees worldwide if employees of the Controlled Companies (as hereinafter defined) are included. Substantially all of its employees are engaged in applicant's business of gold mining and exploration. Applicant and its Controlled Companies produce more

than 50 metric tons (1.6 million ounces) of gold per year, making Randgold one of the world's top ten gold producers.

2. Applicant has four direct subsidiaries (the ''Direct Subsidiaries''), each of which is engaged in the gold mining and exploration businesses: Randgold Resources Limited, a majority-owned (90%) subsidiary, TGME, majority-owned (75%) subsidiary, First Westgold, a fully-owned subsidiary, and Rand Mines Windhoek, a fully-owned subsidiary. Applicant also has substantial assets (the ''Direct Assets'') owned directly or by a fully-owned subsidiary consisting primarily of mineral rights located in southern Africa. The Direct Subsidiaries and Direct Assets as a group account for approximately 45% of applicant's total assets.

3. Applicant also has a cash position of R86 million (US $19 million), and R123 million (US $27 million) held in short-term commercial instruments in South Africa, accounting for 7% and 10% of applicant's total assets, respectively.[1] Applicant's short-term investments are comprised of short-term commercial instruments for which a highly liquid market exists.

4. Applicant also owns minority interests in eight companies, either directly or through fully-owned subsidiaries, all of which are engaged in the gold mining business: Blyvooruitzicht (10.5% common and 11.1% of outstanding options), D.R.D. (23.1% common and 21.6% preferred, giving 23% of the total voting control of D.R.D., and 16.5% of outstanding options), Harmony (18.1% common), E.R.P.M. (14.7% common), Grootvlei (19.8% common), Stilfontein (10% common), Buffelsfontein (6.8% common), and West Wits (3.5% common, 40.3% preferred, and 40.3% of the outstanding options). Through Harmony, applicant also owns 25% of the common stock of Unisel, and through a fully-owned subsidiary (Rand Mines Windhoek), owns a 10% interest in a joint venture named Navachab. Unisel and Navachab also are engaged in the gold mining business. Unisel (but not Navachab), along with the eight companies referred to above in which applicant owns a minority interest, are referred to herein as the ''Controlled Companies.'' To its knowledge, applicant is the largest stockholder of each of the Controlled Companies.[2]

5. Applicant has the direct or indirect power to appoint all of the directors of the Controlled Companies. At the instance of applicant, each Controlled Company has in place a board of directors made up of ten individuals, with each director serving a staggered three year term. For each Controlled Company's board, applicant selects eight directors, seven of whom are ''inside'' directors of applicant's board of directors and one of whom is an ''outside'' director of applicant's board of directors. Each Controlled Company also has two members of its own management team that sit on its board, both of whom are hired and selected by applicant.

6. Applicant has entered into service agreements with each of the Controlled Companies, each with substantially similar terms pursuant to which applicant derived R26 million during the last four fiscal quarters (27% of total revenues). Under the agreements, applicant provides specialized strategic, managerial, financial, information systems, legal, secretarial, and human resources services to the Controlled Companies. Previously, such services were provided to the Controlled Companies under management agreements with applicant that required payments based upon a percentage of gold sales, capital expenditures, and other items regardless of the actual cost of services provided by applicant. The new service agreements set prices for the services to be rendered by applicant based upon their actual cost. Amounts due under the service agreements are paid in cash. Applicant and the Controlled Companies entered into the new arrangement in order to provide operational and financial flexibility to the Controlled Companies to the belief that this will allow each Controlled Company to maximize efficiency and profits rather than to reduce ultimate control by applicant.

7. Dividends generally are not paid on the shares of the Controlled Companies. Applicant has received an aggregate of R3 million (US $666,000) in dividends from shares of the Controlled Companies in the last four fiscal quarters.

8. Applicant also has minority interests in three additional companies which applicant does not control. These interests in the aggregate total less than 3% of applicant's total assets.

Applicant's Legal Analysis

1. Applicant seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities and, therefore, is not an investment company as defined in the Act. Applicant also seeks an order under section 2(a)(9) declaring that it controls the Controlled Companies even though it owns less than 25% of their voting securities. In the alternative, applicant seeks an order under section 6(c) of the Act exempting it from all provisions of the Act.

2. Under section 3(a)(3) of the Act, an issuer is an investment company if it ''is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.'' Section 3(a) defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies. Applicant assumes for purposes of the application that its short-term investments are investment securities under section 3(a)(3) of the Act. Under this assumption, approximately 52% of applicant's total assets (exclusive of cash) are, or could be, deemed to be investment securities. Accordingly, applicant may be deemed to be an investment company within the meaning of section 3(a)(3).

3. Section 3(b)(2) provides that, notwithstanding section 3(a)(3), the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses. Applicant believes that it meets the requirements of section 3(b)(2) because it is primarily engaged in the business of a natural resources group focused on gold, through its wholly-owned or majority-owned subsidiaries, or through companies which it controls. Because applicant owns less than 25% of the voting securities of the Controlled Companies, however, a determination under section

[1] Applicant states that such large cash and liquid investment positions are customary for South African gold mining companies because it is deemed imprudent within the industry to finance exploration and new mines through debt and, consequently, such expenditures are funded through cash or equity.

[2] While applicant believes it is the largest shareholder of each of the Controlled Companies, it cannot be certain because most shareholdings are held by nominees and local law does not require disclosure of ultimate beneficial ownership of large holdings.

2(a)(9) that applicant controls the Controlled Companies is a prerequisite to the ultimate determination of applicant's investment company status.

4. Section 2(a)(9) defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that owners of 25% or less of a company's voting securities do not control such company. This presumption may be rebutted by evidence of control.

5. Applicant argues that a finding of control under section 2(a)(9) is warranted for the following reasons:

a. Applicant has complete control over the nomination process for each of the Controlled Companies' board of directors. Each board meets four times per year, and one of ''applicant's directors'' chairs all meetings of these boards. Decisions made by the board of directors of each Controlled Company generally require a majority vote.

b. Each Controlled Company also has a monthly ''management meeting'' at which at least three of ''applicant's directors'' are present, one of whom is responsible for chairing the meeting.

c. Applicant's control over the Controlled Companies is demonstrated by its practice of causing these companies to acquire contiguous mines and/or mineral rights to integrate with a given Controlled Company's operations. These acquisitions are negotiated by applicant on behalf of the acquiring Controlled Company and it directs the due diligence efforts. Applicant also negotiates and approves all major supply agreements for the Controlled Companies.

d. Applicant also requires the Controlled Companies to submit annual strategic plans in its prescribed format for applicant's approval, as well as detailed monthly management reports. At least weekly, management of the Controlled Companies and officers of applicant hold discussions regarding the status of various affairs at the Controlled Companies and miscellaneous operational issues.

6. Applicant states that its hands-on involvement in the affairs of the Controlled Companies is consistent with the background, training, experience and expertise of applicant's officers and directors in the gold, natural resources and related sectors. Applicant believes that it has effective control of the Controlled Companies' management, strategy and operations. Applicant asserts that its structure reflects, among other things, the manner in which South African gold mining companies tend to spread risk, as well as the laws and business customs of South Africa. Accordingly, applicant believes that it controls the Controlled Companies within the meaning of section 2(a)(9) of the Act.

7. In determining whether applicant is ''primarily engaged'' in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) the issuer's historical development; (b) its public representations or policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

a. *Historical Development.* Applicant is the successor to a line of companies that have been in existence since 1893 and that had their origin in the operation of gold mines. Historically, applicant managed its business much the same as most South African gold holding companies did, i.e., through detailed and extremely strict management contracts. Applicant terminated these agreements in favor of the less restrictive serviced agreement arrangement described above. Applicant believes (and has already seen initial positive results) that the new arrangement will allow each Controlled Company to become more efficient and maximize its profits. Applicant asserts that today it exercises the same effective control over all of its constituent companies through representation on the Controlled Companies' boards of directors or cross-directorships as it has in the past. Applicant also argues that its relatively large holdings of short-term investment securities is a standard practice in the industry because it is deemed too speculative to take on debt to finance exploration activities. For example, the use of gold properties as collateral for any loan makes the value of such collateral dependent upon the price of gold, which in turn makes such loans difficult and expensive to obtain.

b. *Public Representations of Policy.* Applicant states that it does not hold itself out as an ''investment company'' within the meaning of the Act, and has never been a registered investment company (or subject to any analogous regulatory scheme). Applicant has consistently held itself out as a gold mining and exploration business in all its communications with shareholders and the public.

c. *Activities of Officers and Directors.* Applicant states that its management, on the whole, spends substantially all of its time actively involved in the gold mining and exploration business. Of applicant's fourteen directors, only one director, the Finance Director, spends any meaningful amount of time (less than 5%) monitoring applicant's securities holdings and cash management activities. The bulk of such duties consists of supervising the activities of an outside investment bank which has been entrusted with investing applicant's cash. Each of applicant's executive directors has substantial experience in applicant's gold mining and exploration business, rather than any background in investing or portfolio management. Applicant is represented by its directors and officers of all of the boards of directors of the Direct Subsidiaries and Controlled Companies. In those companies, applicant's directors and officers dominate management's strategic decision making and play a leading role in other essential operational functions.

d. *Nature of Assets.* As of June 30, 1996, applicant had total assets of R1211 (US $282 million).[4] For purposes of analysis under section 3(b)(2), 45% of applicant's total assets were operating assets attributable to its Direct Subsidiaries and Direct Assets, and 35% of applicant's total assets were attributed to its Controlled Companies.[5]

e. *Sources of Income.* In applicant's four fiscal quarters ending June 30, 1996, applicant derived approximately 14% of its revenues and 4% of its net income from its Direct Subsidiaries, Direct Assets, service agreements and other operations.[6] Revenues from the service agreements alone accounted for 7.7% of its revenues and 3.6% of its net income over such period. In the same period, applicant derived approximately 68% of its revenues and 23% of its net income from Controlled Companies. In that same period, applicant derived 18% of its revenues and 69% of its net income from extraordinary items, including cancellation of the management agreements and the sale of shares of Controlled Companies.[7] The expected effect of the cancellation of the

[3] *Tonopah Mining Company of Nevada,* 26 S.E.C. 426, 427 (1947).

[4] The methods used in the valuation of applicant's assets were in accordance with section 2(a)(41) under the Act.

[5] The remaining 20% of total assets are made up of 7% in cash and cash equivalents, 10% in short-term investments, and 3% in traditional investment securities.

[6] All figures used in the determination of net income are based upon equity accounting methods pursuant to which the revenues and income of the Controlled Companies are included in applicant's revenues and income in proportion to applicant's equity interests in such companies.

[7] Applicant states that the extraordinary items described above were generally not present during the prior two periods ended June 30, 1995, and June 30, 1994, and applicant believes that during those periods revenues from Direct Subsidiaries, Direct Assets, other operations and Controlled Companies would account for the majority of applicant's revenues and net income.

management contracts will be to reduce fees from Controlled Companies by approximately 56%. Applicant expects, however, a corresponding reduction of costs due to the restructuring that occurred. The immediate net effect of the change was the payment to applicant of termination fees under the agreements, which fees are included in extraordinary income as described above. While revenues from applicant's Direct Subsidiaries, Direct Assets, service agreements and other operations, and dividends from Controlled Companies' stock are a substantial portion of applicant's total revenue, they account for a significantly smaller portion of applicant's net income. This largely reflects (a) the strategy of applicant and its Controlled Companies to retain earnings for future operations and growth, rather than to distribute earnings to shareholders in the form of dividends, (b) the fact that gold sales made directly by applicant are relatively small in relation to applicant's total activities, which consist largely of exploration properties, and (c) the fact that virtually all of applicant's expenses relate to the activities of its Direct Subsidiaries and its Direct Assets.

8. In the alternative to exemptive relief under section 3(b)(2), applicant requests an order under section 6(c) exempting applicant from all provisions of the Act and the rules and regulations thereunder. Section 6(c) authorizes the Commission to issue a conditional or unconditional exemption from any provision of the Act or rule thereunder if the exemption is ''necessary or appropriate in the public interest'' and is ''consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].'' Applicant states that it was structured for valid economic and legal reasons and not with the Act in mind. Consequently, applicant believes that it would be inappropriate and detrimental to applicant and its shareholders to be treated as an investment company and made subject to the Act. Furthermore, applicant believes that it is not the type of company and does not engage in the activities the Act was designed to regulate. Accordingly, applicant submits that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors, and is consistent with the purposes of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4860 Filed 2–26–97; 8:45 am]

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[Release No. 34–83821; File No. SR–NASD–97–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Scope of the Uniform Practice Code

February 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on February 20, 1997, the NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 11100 of the Uniform Practice Code (''Code'') of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to clarify the scope of the Code and the exception for transactions settled through a clearing agency. Below is the text of the proposed rule change. Proposed new language is in italics.

11100. Scope of Uniform Practice Code

(a) All over-the-counter secondary market transactions in securities *(including restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933)* between members, *including the rights and liabilities of the members participating in the transaction, and those operational procedures that affect the day-to-day business of members* shall be subject to the provisions of this Code except:

(1) transactions in securities between members which are compared, cleared or settled through the facilities of a registered clearing agency, *except to the extent that the rules of the clearing agency provide that rules of other organizations shall apply.*

* * * * *

II. Self-Regulatory Organizations Statement of the Purpose of and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Code provides detailed requirements for many procedures and practices related to the operational aspects of members' securities business, including requirements for deliveries, payments, dividends, rights, interest, exchange of confirmations, assignments, powers of substitution, computation of interest, due bills, transfer fees, ''when, as and if issued'' trading, ''when, as and if distributed'' trading, market to market, buy-ins, close-outs, accounts transfers, settlement of syndicate accounts, etc.

The introductory language in paragraph (a) of Rule 11100 states the general standard that ''all over-the-counter secondary market transactions in securities between members shall be subject to the provisions of this Code. * * *'' The focus of the language only on ''transactions in securities'' does not encompass those provisions of the current Code that address the rights and liabilities of the members participating in the transaction and provide procedures that are not related to securities transactions, e.g., the setting of ex-dates and the transfer of customer accounts. In addition, the exception in subparagraph (a)(1) of Rule 11100 for securities transactions cleared through a registered clearing agency does not address the situation where the rules of the clearing agency require compliance with the rules of the applicable market. In this latter case, the clearing agency exception is technically not available since the clearing agency requires that

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[1] 15 U.S.C. § 78s(b)(1).

[2] The proposed rule change was originally filed on January 29, 1997. The NASD subsequently submitted Amendment No. 1 that removed certain unnecessary text. This document provides notice of the proposed rule change as amended. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated February 20, 1997.