

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24553; 812-11908]

The Pitcairn Trust Company, et al.; Notice of Application

July 6, 2000.

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

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order to permit certain common and collective trust funds, certain individual trust accounts and certain limited partnerships to transfer their assets to certain series of a registered open-end management investment company in exchange for shares of the series.

APPLICANTS: The Pitcairn Trust Company ("PTC"), Pitcairn Funds (the "Trust"), Diversified Value Fund, Diversified Growth Fund, Select Value Fund, Select Growth Fund, Small Cap Value Fund, Small Cap Growth Fund, Tax Exempt Bond Fund, Family Heritage Fund and International Equity Fund (collectively, the "Common Trust Funds"), Employee Benefit Large-Capitalization Fund, Employee Benefit Mid-Capitalization Fund, Employee Benefit Small-Capitalization Fund, Employee Benefit Fixed Income Fund and Employee Benefit International Equity Fund (collectively, the "Collective Trust Funds," together with the Common Trust Funds, the "CTFs"). Collectively, PTC, the Trust and the CTFs are referred to as "Applicants."

FILING DATES: The application was filed on December 23, 1999 and amended on June 29, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests

should be received by the Commission by 5:30 p.m. on July 27, 2000, and should be accompanied by proof of service on Applicants 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o One Pitcairn Place, 165 Township Line Road, Suite 3000, Jenkintown, PA 19046.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or Janet M. Grossnickle, 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 may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Trust, a Delaware trust, will be registered under the Act as an open-end management investment company and will offer a number of series (each a "Fund") to the public, each with separate investment objectives, policies, and restrictions. PTC will serve as investment adviser to each Fund.¹

2. PTC is a wholly-owned subsidiary of Pitcairn Company, which is wholly-owned by Pitcairn Group L.P. ("PGLP"), a limited partnership. PGLP's limited partnership units are owned by approximately 85 adult Pitcairn family members and related trusts, trusts governed by the Uniform Transfers to Minors Act, foundations and religious organizations supported by the Pitcairn family. For some of these family members, the beneficial ownership interests in PGLP partnership units are in excess of 5% of total units outstanding, both in terms of economic interest and voting power. Pitcairn family members also beneficially own, primarily through trusts, approximately 63% of the interests in the Common Trust Funds. A number of Pitcairn family members serve as co-trustees for trusts with, in the aggregate, more than

5% of the total beneficial interests in one or more common Trust Funds. Certain employee benefit plans maintained for the benefit of employees of PTC and its affiliates, including three members of the Pitcairn family who are employees of PTC ("PTC Plans"), own 70%-85% of the assets of the Collective Trust Funds.

3. Each CFT is maintained by PTC and is either (i) a "common trust fund" as defined in section 584(a) of the Internal Revenue Code of 1986, as amended ("Code"), or (ii) a collective trust fund that meets the requirements of section 401 of the Code. The CTFs are excluded from the definition of "investment company" under sections 3(c)(3) (for the Common Trust Funds) and 3(c)(11) (for the Collective Trust Funds) of the Act. Participants in the CTFs are persons or entities for which PTC acts as either trustee, executor, administrator, guardian, or custodian ("Participants"). Pitcairn company serves as the general partner of certain limited partnerships ("Partnerships"), the units of which are beneficially owned by clients of PTC. PTC serves as trustee for certain individual trust accounts ("ITAs") that are held by PTC as sole or co-trustee for the benefit of individual clients, none of which is a Pitcairn family member or an entity in which a Pitcairn family member has a pecuniary interest.

4. Applicants propose to transfer in-kind all of the assets of each CFT, ITA and Partnership to one of the Funds with generally similar investment objectives in exchange for Class I shares of the respective Fund having an aggregate net asset value equal to that of the assets transferred (the "Conversions").² Class I shares will not be subject to a front-end or contingent deferred sales charge, redemption fees or rule 12b-1 distribution fees, although there may be a shareholder service fee of 0.25%. The assets of the CTFs to be transferred will be valued in accordance with the provisions of rule 17a-7(b) under the Act, and the shares of the Funds issued will have an aggregate net asset value equal to the value of the assets transferred. The shares of the

² Applicants also request relief for future transactions in which the assets of a terminating common or collective trust fund maintained by PTC are exchanged for shares of a registered open-end management investment company, or a series thereof, advised by PTC, or any entity controlling, controlled by, or under common control with PTC when owners of PTC or the PTC Plans own 5% or more of such trust fund or such registered investment company, or series thereof ("Future Transactions"). Applicants state that they will rely on the requested relief for Future Transactions only in accordance with the terms and conditions contained in the application.

¹ As a "bank" within the meaning of section 202(a)(2) of the Investment Advisers Act of 1940 ("Advisers Act"), PTC currently is not subject to the registration requirements of the Advisers Act.

Funds issued to the CTFs will be credited to the account of each Participant, *pro rata*, according to the Participant's interest in the relevant CTF owned immediately prior to the Conversions. Following the Conversions, the CTFs will be terminated and the Fund shares will be held by PTC (together with any co-trustees). In addition, the Partnerships will terminate at the time of their Conversions. The Conversions of the CTFs are scheduled to occur on or before August 11, 2000. The Conversions of the Partnerships and ITAs will occur approximately one week before the Conversion of the CTFs. PTC will pay all expenses incurred in connection with the Conversions.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling, or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (c) if the other person is an investment company, any investment adviser of that company. Applicants state that, because the CTFs may be viewed as acting as principal in the Conversions, and because the CTFs and the Funds may be viewed as being under the common control of PTC, within the meaning of section 2(a)(3)(C) of the Act, the Conversions may be subject to the prohibitions of section 17(a) of the Act.

2. Rule 17a-7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the securities. Applicants state that rule 17a-7 may not be available for the conversions because, among other affiliations, the owners of PTC beneficially own more than one half the interests in the Common Trusts

Funds, and the PTC Plans own 70-85% of the assets of the Collective Trust Funds. Thus, Applicants may not meet the sole affiliation requirement of rule 17a-7. In addition, Applicants state that the Conversions are to be effected as in-kind transfers, rather than in cash.

3. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that certain conditions are satisfied. Applicants state that rule 17a-8 may not be available for the Conversions because the CTFs are not registered investment companies. In addition, Applicants state that the CTFs, ITAs, Partnerships and the Funds may be deemed to be affiliated for reasons other than those covered by rule 17a-8.

4. Section 17(b) of the Act provides that the Commission may exempt a proposed transaction from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule thereunder 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.

5. Applicants request an order under section 17(b) of the Act to permit the Conversions and under sections 6(c) and 17(b) to permit the Future Transactions. Applicants submit that the Conversions satisfy the standards for relief under sections 6(c) and 17(b) of the Act. Applicants state that the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will adopt

procedures pursuant to which the Conversions may be effected in accordance with rule 17a-7(e), and that the provisions of rule 17a-7(b), (c), (d) and (f) will be satisfied. The Conversions will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Funds in the Conversions is in the best interests of each Fund and that the interests of existing shareholders of each of the Funds will not be diluted as a result of the Conversions. These findings, and the basis upon which they will be made, will be fully recorded in the minute books of the Trust. In addition, before the Conversions are entered into, PTC will have determined in accordance with its fiduciary duties that the conversions are in the best interest of the ITAs and the Partnerships and the beneficial owners thereof.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Conversions will comply with the terms of rule 17a-7(b) through (f).

2. The Conversions will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Funds in the Conversions is in the best interests of each Fund and that the interests of existing shareholders of such Fund will not be diluted as a result of the Conversions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Trust.

3. The Conversions will not occur unless and until (a) PTC, as trustee and fiduciary of each CTF and the Participants therein, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of Participants in each of the CTFs, and (b) PTC, as fiduciary of each ITA and Partnership, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of each ITA or Partnership and its beneficial owners.

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

Margaret H. McFarland,

Deputy Secretary.

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