

electricity, the sale of energy services, real estate development, and venture capital investment. APS provides retail electric services principally in Arizona. In addition to the generation, transmission, and distribution of electricity, APS is presently engaged in power marketing activities. The Arizona Corporation Commission ("ACC") regulates APS with respect to its retail rates, accounting, service standards, service territory, issuances of securities, siting of generation and transmission projects, and various other matters. The Federal Energy Regulatory Commission regulates APS' wholesale generation and interstate transmission rates, accounting, and certain other matters.

The purpose of the Reorganization is to comply with certain requirements set forth in rules adopted by the ACC that provide the framework for introduction of retail electric competition in Arizona ("Competition Rules") and in a final ACC order approving APS' settlement with various parties with respect to implementation of the Competition Rules ("Settlement").² Under the Competition Rules and the Settlement, APS must separate its generating assets and competitive services from its transmission and distribution functions no later than December 31, 2002.

The principal transactions associated with the Reorganization are the following. First, APS will contribute certain of its fossil and solar generating facilities, assets and related operational agreements to one or more newly-formed wholly-owned subsidiaries ("Transitory Subsidiaries"). Second, APS will distribute (or cause to be distributed) all of the common stock of each Transitory Subsidiary to Pinnacle West. Third, the Transitory Subsidiaries will then be merged into PWE, with PWE as the surviving entity. It is contemplated that these transactions will occur simultaneously.

When the Reorganization is completed, APS' existing divisional structure, in which electric utility operations are divided along functional lines, will be formalized, and separate corporate entities will engage in the transmission/distribution of electricity and the generation of electricity. APS will become a "wires" company and will continue to own and operate its existing electric transmission and distribution system. PWE become a generating company and will own or lease and operate APS' generation assets and sell the output from these assets at

wholesale to Power marketing and Trading ("Power Marketing"), a division of Pinnacle West. Power Marketing was previously a division of APS engaged primarily in the sale and purchase of electric capacity and energy in the wholesale market. Power Marketing sold excess power from APS' generation facilities and also purchased energy from other entities to meet APS' requirements to supply retail and wholesale customers. The Competition Rules and Settlement contemplate that APS will move its Power Marketing division to an affiliate. Accordingly, on October 1, 2000, Power Marketing became a division of Pinnacle West. It is expected that Power Marketing will sell power to APS as well as to non-affiliated power purchasers. APS will continue to provide transmission and distribution services at regulated rates, as well as provide energy to those retail customers in APS' existing service territory that do not elect to use an alternate retail power supplier.

Pinnacle West states that, after the Reorganization, it will continue to qualify for exemption from registration under section 3(a)(1) of the Act because Pinnacle West and each public-utility company from which it derives, directly or indirectly, any material part of its income, will be predominantly intrastate in character and will carry on their business substantially in Arizona, the state in which Pinnacle West and each such public-utility company is organized.³

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-31; File No. S7-02-01]

Privacy Act of 1974: Notice of Modifications to a System of Records and Establishment of a New System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intended modifications to an existing system of records and the establishment of a new system of records.

SUMMARY: The Securities and Exchange Commission (SEC or the Commission) proposes to modify an existing system of records by excluding investment adviser registration forms, forms withdrawing registration by investment advisers, and related investment adviser records. The Commission further proposes to add a new system of records consisting of these registration forms, withdrawal notices, and related records. This proposal is precipitated by the development of a new Internet-based system for the registration of investment advisers called the Investment Adviser Registration Depository (IARD). NASD Regulation, Inc. (NASDR) will operate the IARD.

DATES: Comments must be received by February 26, 2001. The proposed changes and the new system of records will take effect March 6, 2001 unless the Commission receives comments that would require a different determination.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. You may also send your comments electronically to the following electronic address: rule-comments@sec.gov. All comments should refer to File No. S7-02-01 and, if sent electronically, should include this file number on the subject line. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. If sent electronically, comment letters will also be available on our Web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Tsai, Privacy Act Staff Attorney (202) 942-4326, Office of Filings and Information Services, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

SUPPLEMENTARY INFORMATION: The Commission gives notice of major changes to "Applications for Registration or Exemption under the Investment Advisers Act of 1940 and the Investment Company Act of 1940" (SEC-2), which results in the establishment of a new system—"Investment Adviser Records" (SEC-50).

SEC-2

Currently, the Commission treats paper and microfiche copies of applications for registration by investment advisers (Form ADV) and their related amendments and withdrawal notices as agency records subject to the Privacy Act. Accordingly, the Commission has published and

² Under the terms of the Competition Rules and the Settlement, retail choice for APS' retail customers is being phased in. All of APS' retail customers will be entitled to choose their retail power supplier beginning January 1, 2001.

³ Pinnacle West states that it will continue to file, under rule 2, annual exemption statements on Form U-3A-2 following the Reorganization.

periodically updated a system of records notice for these records, designated as SEC-2. These records contain names of individuals and information about those individuals, such as disciplinary information. However, the current Privacy Act notice does not address the electronic filing of such forms and new ways of maintaining and retrieving them through any SEC or non-SEC system. The Commission is therefore proposing to transfer investment adviser records, whether in paper, microfiche, or electronic format from SEC-2 to "Investment Adviser Records" (SEC-50), a new Privacy Act records system.

SEC-50

On September 12, 2000, the Commission adopted amendments to rules 30-5 and 30-11 of the SEC's Organization and Program Management rules (17 CFR 200.30-5 and 200.30-11), new rule 203-3 and Form ADV-H; adopted amendments to rules 0-2, 0-7, 203-1, 203-2, 203A-1, 203A-2, and 204-1 (17 CFR 275.0-2, 275.0-7, 275.203-1, 275.203-2, 275.203A-1, 275.203A-2, and 275.204-1); and Form ADV, Form ADV-W, and Form 4-R (17 CFR 279.1, 279.2, and 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1) (the Advisers Act or the Act).¹ The Commission also withdrew rule 204-5 (17 CFR 275.204-5) and Forms 5-R, 6-R, 7-R, and ADV-Y2K (17 CFR 279.5, 279.6, 279.7, and 279.9) under the Advisers Act.²

These amendments require investment advisers to submit all Form ADV applications for registration, Form ADV amendments, and Form ADV-W withdrawal requests electronically through the IARD. As a result of these amendments, NASDR, which is responsible for the operation and maintenance of the IARD system, effectively will be the custodian of investment adviser registration records filed electronically through the IARD after January 1, 2001. Under 5 U.S.C. 552a(m), the SEC and the NASDR intend to enter into a Memorandum of Understanding, under which the NASDR will assume, among other things, responsibilities for compliance with the Privacy Act with respect to those records and further will maintain those records in accordance with federal recordkeeping requirements.³

All investment adviser records on paper and microfiche, received by the

SEC before January 1, 2001, will remain in its custody and control and their routine uses are unchanged by the development of the IARD. All investment adviser records received by the SEC after January 1, 2001 that are on paper or microfiche also will be in the SEC's custody and control.

As 5 U.S.C. 552a(r) requires, the SEC has submitted its reports of the new and the altered systems of records to the Congress and the Office of Management and Budget. This complies with Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1996.⁴ Accordingly, the SEC proposes to amend SEC-2 and establish SEC-50, to read as follows:

SEC-2

SYSTEM NAME:

Applications for Registration or Exemption under the Investment Company Act of 1940.

SYSTEM LOCATION:

SEC, 450 Fifth Street, NW, Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, directors, and other individuals related to investment companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, address, telephone numbers, social security number, education, past and present employment, disciplinary history, business relationships, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77f, 77g, 77h, 77j, 80a-6, and 80a-8.

PURPOSE(S):

To help the SEC staff process applications for registration or exemption, registration statements, and related forms under the Investment Company Act of 1940 and implement the Federal securities laws and rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any member of the general public upon request;

(2) Any Federal, state, local, or foreign government authority or securities self-regulatory organization that is

investigating a violation or potential violation of a statute, rule, regulation, or order;

(3) Any Federal, state, local, or foreign bar association or similar licensing authority responsible for possible disciplinary action;

(4) Any Federal, state, or local government or governmental authority that is deciding to hire or retain an individual, sign a contract, or issue a license, grant, or benefit;

(5) Any individual or entity appointed by a court of competent jurisdiction or agreed upon by the parties to a pending court action or administrative proceeding alleging a violation of the Federal securities laws or rules; and

(6) Any contractor that performs, on the SEC's behalf, services requiring the use of these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on paper, microfilm, or magnetic tape and in a computer system.

RETRIEVABILITY:

These records are retrievable by the name of, or a file number assigned to, the registrant. Individual name access to these records is available through the SEC's Name-Relationship Search Index.

SAFEGUARDS:

Non-computer records are maintained in a central records facility that only authorized individuals may access. The facility is locked, with security cameras and a 24-hour security guard. Computer records, which are subject to data integrity controls, require passcodes for database access.

RETENTION AND DISPOSAL:

These records are transferred to the Federal Records Center periodically for storage. They are controlled by file number and retained under 17 CFR 200.80f.

SYSTEM MANAGER(S) AND ADDRESS:

Records Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC Operations Center, 6432

¹ Investment Advisers Act Release No. 1897 (Sept. 12, 2000) (65 FR 57438 (Sept. 22, 2000)).

² *Id.*

³ 36 CFR part 1220, Federal Records—General; 36 CFR part 1222, Creation and Maintenance of Federal Records; and 36 CFR part 1234, Electronic Records Management.

⁴ 61 FR 6428, 6435-39.

General Green Way, Alexandria, VA 22312-2413.

RECORDS ACCESS PROCEDURES:

Persons wishing to access or contest these records should contact the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

CONTESTING RECORD PROCEDURES:

See Records Access Procedures, above.

RECORD SOURCE CATEGORIES:

Applications for registration or exemption and related forms filed with the SEC under the Investment Company Act of 1940.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC-50

SYSTEM NAME:

Investment Adviser Records.

SYSTEM LOCATION:

Records filed before January 1, 2001 and paper records filed after January 1, 2001: SEC, 450 Fifth Street, NW, Washington, DC 20549; and Form ADV applications for registration, Form ADV Amendments, and Form ADV-W withdrawal notices filed electronically on IARD after January 1, 2001: NASDR, 9509 Key West Avenue, Rockville, MD 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants and officers, directors, principal shareholders, or other individuals related to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, social security number, education, past and present employment, disciplinary history, business relationships, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 80b-3 and 80b-6a.

PURPOSE(S):

To help the SEC staff process applications for registration or exemption and related forms under the Investment Advisers Act of 1940 and implement the Federal securities laws and rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any member of the general public upon request;

(2) Any Federal, state, local, or foreign government authority or securities or commodities self-regulatory organization that is investigating a violation or potential violation of a statute, rule, regulation, or order;

(3) Any Federal, state, local, or foreign bar association or similar licensing authority responsible for possible disciplinary action;

(4) Any Federal, state, or local government or governmental authority that is deciding to hire or retain an individual, sign a contract, or issue a license, grant, or benefit;

(5) Any individual or entity appointed by a court of competent jurisdiction or agreed upon by the parties to a pending court action or administrative proceeding alleging a violation of the Federal securities laws or rules; and

(6) Any contractor that performs, on the SEC's behalf, services requiring the use of these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records filed before January 1, 2001 and paper records filed after January 1, 2001 in the SEC's custody are maintained on paper, microfilm, or magnetic tape and in a computer system.

Form ADV applications for registration, Form ADV amendments and Form ADV-W notices of withdrawal filed electronically on the IARD after January 1, 2001 in the NASDR's custody are maintained in electronic format (IARD).

RETRIEVABILITY:

These records are retrievable by the name of, or a file number assigned to, the registrant. Individual name access to these records is available through the SEC's Name-Relationship Search Index.

SAFEGUARDS:

Non-computer records in the SEC's custody are maintained in a central records facility that only authorized individuals may access. The facility is locked, with security cameras and a 24-hour security guard. Computer records, which are subject to data integrity controls, require passcodes for database access.

RETENTION AND DISPOSAL:

The records in the SEC's custody are transferred to the Federal Records Center periodically for storage. They are controlled by file number and retained under 17 CFR 200.80f.

SYSTEM MANAGER(S) AND ADDRESS:

Records filed before January 1, 2001 and paper records filed after January 1, 2001—Records Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

Form ADV applications for registration, Form ADV amendments and Form ADV-W notices of withdrawal filed electronically on IARD after January 1, 2001—NASDR, 9509 Key West Avenue, Rockville, MD 20850.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

RECORDS ACCESS PROCEDURES:

Persons wishing to access or contest these records should contact the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

CONTESTING RECORD PROCEDURES:

See Records Access Procedures, above.

RECORD SOURCE CATEGORIES:

Registrations and related forms filed with the SEC under the Investment Advisers Act of 1940.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: January 19, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43833; File No. SR-ISE-00-10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the International Stock Exchange, LLC Relating to Payment for Order Flow

January 10, 2000.

I. Introduction

On September 12, 2000, the International Securities Exchange, LLC ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act