

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

Margaret H. McFarland,

Deputy Secretary.

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[Investment Company Act Rel. No. 20982; 812-9166]

Pitcairn Group L.P., et al.; Notice of Application

March 31, 1995.

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

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

APPLICANTS: Pitcairn Group L.P. ("Pitcairn"), and Johnstone L.P. ("Johnstone").

RELEVANT ACT SECTIONS: Exemption requested under section 23(c)(3) from the provisions of section 23(c), and under section 57(c) from the provisions of section 57(a)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting Pitcairn to acquire 221,954 (approximately 39%) of its limited partnership units (the "Units") from Johnstone, a limited partnership formed by former Pitcairn unitholders to liquidate their ownership interests in Pitcairn, in exchange for a *pro rata* portion of the total assets of Pitcairn (the "Redemption"). The order also would permit Johnstone to acquire assets from Pitcairn in the Redemption and to acquire a *pro rata* portion of the total assets of Moreland L.P. ("Moreland"), a limited partnership controlled by Pitcairn, in exchange for the 222,553 Moreland limited partnership units owned by Johnstone (the "Related Transaction").

FILING DATES: The application was filed on August 15, 1994, and amended on December 9, 1994, and March 29, 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 1995, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Pitcairn, One Pitcairn Place, Suite 3000, 165 Township Line Road, Jenkintown, Pennsylvania 19046; Johnstone, 75 James Way, Southampton, Pennsylvania 18966.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942-0583, or Barry D. Miller, Senior Special Counsel, 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 SEC's Public Reference Branch.

Applicants' Representations

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

2. Pitcairn is the sole shareholder of Pitcairn Company ("Pitco"), an investment adviser formed in 1986 and registered under the Investment Advisers Act of 1940. Pitco serves as the managing general partner of Pitcairn. Pitcairn also has four individual general partners, each of whom is a member of the Pitcairn family. In addition, Pitco serves as the general partner of Moreland, a Pennsylvania limited partnership that owns undeveloped land in and near the Borough of Bryn Athyn, Pennsylvania (where a large number of Pitcairn family members reside), and One Place L. P. ("One Place"), a Pennsylvania limited

partnership that owns the land and building in which the offices of Pitcairn, Pitco, and Pitcairn Trust Company ("PTC") (a Pennsylvania chartered trust company formed as a subsidiary of Pitco in 1987 to provide trust and related services to the Pitcairn family and other high net worth individuals) are situated.²

3. As a result of general change in the Pitcairn family and divergence of points of view as to investment philosophy, among other things, it became apparent in the early 1990s that a separation of family members from the family partnerships would occur. Consequently, in February 1993, the board of directors of Pitco asked its management to recommend a plan for a buy-out of the interests of certain Pitcairn family members in certain family assets. This recommendation, through arms' length negotiations, resulted in the proposed Redemption and Related Transaction.

4. The series of transactions contemplated by the Redemption and the Related Transaction are as follows:

a. Four individuals formed Johnstone, a Pennsylvania limited partnership, for the purpose of receiving, with the intent to liquidate, their and other Pitcairn family members' (collectively, the "Separating Members") limited partnership interests in Pitcairn, Moreland, and One Place. The Separating Members, together with their spouses and related trusts, are no longer clients of PTC and have contributed their limited partnership interests in Pitcairn, Moreland, and One Place to Johnstone in exchange for limited partnership interests in Johnstone.³ Accordingly, Johnstone has become a substitute limited partner in Pitcairn, Moreland, and One Place, owning approximately 39%, 38.6%, and 39%, respectively, of the limited partnership units. Assets received by Johnstone in the Redemption and the Related Transaction are intended to be held by Johnstone only until they can be liquidated and the proceeds distributed to the Separating Members.

b. In the Redemption, Johnstone will transfer to Pitcairn all of the Units

¹ There are 576,124 units of general and limited partnership interests of Pitcairn issued and outstanding, approximately 70% of which are held in irrevocable trusts for members of the Pitcairn family, and approximately 30% of which are owned directly by family members and their churches. The units are registered under section 12 of the Securities Exchange Act of 1934, but there is no market for the units, and there are generally fewer than ten transfers per year. These transfers typically arise from terminating trusts or estates, interfamily gifts, or similar transactions involving one or more members of the Pitcairn family or trusts for their benefit.

² Pitcairn was the sole initial limited partner of Moreland and One Place; it spun off its interests in the partnerships to the owners of its Units in 1992. As a result, ownership of Pitcairn, Moreland, and One Place is nearly identical.

³ The only connection of the Separating Members with the remaining unitholders after consummation of the transactions described herein will be that two of the Separating Members will serve as trustees of trusts holding Units. These two Separating Members will continue to serve as trustees at the request of the beneficiaries of those trusts, notwithstanding their status as Separating Members.

owned by Johnstone, and Pitcairn will transfer to Johnstone approximately 39% of its total assets (consisting of certain limited partnership interests, a non-recourse note of Moreland and a related mortgage, and cash) in redemption of the Units.

c. In the Related Transaction, Johnstone will transfer to Moreland all the limited partnership interests in Moreland owned by Johnstone, and Moreland will transfer to Johnstone approximately 38.6% of its total assets (consisting of certain real estate, a mortgage, and cash) in redemption of these limited partnership interests.⁴

d. Johnstone will transfer to One Place all the limited partnership interests in One Place owned by Johnstone, and One Place will transfer cash in an amount equal to approximately 39% of the value of its total assets to Johnstone in redemption of these limited partnership interests.

e. Pitcairn has completed, in escrow, a private offering, in reliance on section 4(2) of the Securities Act of 1993 (the "Securities Act") and rules 502 and 506 of Regulation D under the Securities Act, and has received binding subscription agreements for \$5,337,000 from a small group of qualified investors for additional Units. The proceeds of this offering will be used to replace capital used in the Redemption and to provide for additional working capital.

5. The redemptions of the Johnstone-owned limited partnership interests of Pitcairn, Moreland, and One Place will be effected at values that have been agreed upon by representatives of those Pitcairn family members who, with their spouses and related trusts, wish to continue to be clients of PTC and owners of Pitcairn (the "Remaindermen") and by representatives of the separating Members in arms' length negotiations conducted during 1993. A committee (the "Sellers' Committee") was formed

to negotiate the value of the Separating Members' interests; the potential group of family members willing to buy the interests of the Separating Members also formed a committee (the "Buyers' Committee"). All family members were informed about the committees and were urged to contact them about buying or selling their interests.

6. Various methods were used to determine the value of the underlying assets held by Pitcairn, Moreland, and One Place.⁵

a. The assets of Pitcairn were valued on the basis of the methodologies utilized by its general partners in arriving at fair values for purposes of periodically computing the net asset value of the partnership. These methodologies included (i) valuation of limited partnership interests by the general partners of such partnerships; (ii) valuation of the stock of Pitco by an independent appraiser, adjusted to reflect subsequent business changes; (iii) valuation of land based upon values in a joint development agreement and the best judgment of the Pitcairn general partners, taking all relevant factors into consideration; (iv) valuation of a limited partnership interest in a tree nursery based upon the catalogue price of the tree stock less harvest and distribution costs; and (v) valuation of a limited partnership interest in an office building based upon discontinued cash flows from the rental stream generated by the property.

b. The land owned by Moreland was valued by Pitco as the general partner of Moreland on the basis of values assigned in a 1993 market research study by an independent firm familiar with the land and transactions in the vicinity of the Moreland land. This study was commissioned by the Real Estate Advisory Committee of the Pitco board, a committee comprised of both Remaindermen and Separating Members. The recommended values assigned in the study, together with data from an appraisal conducted in 1989 and from comparable sales (where appropriate), formed the basis of the values assigned by the parties.

c. With respect to One Place, Pitco obtained an independent appraisal of the land and office building (the primary asset of One Place), and the Sellers' Committee obtained its own independent appraisal. The board of directors of Pitco subsequently engaged an outside real estate consultant who, in June, 1993, reviewed the independent appraisal obtained by Pitco and

validated the assumptions used by the appraiser.

7. On the evening of December 13, 1993, representatives from the Buyers' Committee, the Sellers' Committee, and Pitco (as managing general partner of Pitcairn and sole general partner of Moreland and One Place) met to allocate the assets between the Remaindermen and the Separating Members equitably. These negotiations, which were conducted by persons who were fully aware of the attributes, both positive and negative, of each of the assets of Pitcairn, Moreland, and One Place, culminated in the Agreement in Principle (the "Agreement"). The Agreement provides for the allocation of assets and further provides that the costs of forming Johnstone will be borne by Johnstone and that all other transaction costs will be shared by Pitcairn (including certain affiliated entities) and Johnstone on a *pro rata* basis. Since it is anticipated that Johnstone will sell Pitcairn approximately 39% of the Units and buy approximately 39% of Pitcairn's assets, it would bear that percentage of the transaction costs (exclusive of any income taxes that each party will bear separately and of any additional legal expenses incurred by Johnstone) through the reduction in cash to be paid by Pitcairn to Johnstone at the closing of the Redemption. The Agreement was approved by Pitco (as managing general partner of Pitcairn and sole general partner of Moreland and One Place) and by individual representatives of the Remaindermen and Separating Members who, together, represented over 86% of the outstanding Units. The Remaindermen who did not sign the Agreement consisted of 94 "persons" who own approximately 13.9% of the Units.⁶ These unitholders were informed, however, of the transactions contemplated by the Agreement (including the proposed allocation of assets), and have not objected.

8. There has been no vote of unitholders with respect to the Redemption and the Related Transaction inasmuch as such a vote is not required under the Pitcairn partnership agreement. However, a majority of the respective general partners of Pitcairn and Johnstone have approved the Redemption and the Related Transaction as being reasonable

⁴ Prior to the redemption of the Moreland units owned by Johnstone, Pitcairn will lend to Moreland a total of \$3,450,000 in exchange for two non-recourse notes. The first note, in the amount of \$2,250,000, will be secured by the portion of Moreland's real estate that ultimately will be transferred to Johnstone in the Related Transaction. The second note, in the amount of \$1,200,000, will be secured by a different parcel of real estate, which will remain the property of Moreland. Using a portion of the proceeds of the first note, Moreland will buy newly issued limited partnership interests in One Place for cash, enabling One Place to redeem its units owned by Johnstone for cash. In redeeming its units from Johnstone, Moreland will transfer the mortgage liability on the first parcel of real estate to Johnstone along with the real estate itself. When Pitcairn redeems its Units from Johnstone, Pitcairn will transfer to Johnstone the note secured by the mortgage on the real estate Johnstone received from Moreland, and Johnstone will be able to extinguish the mortgage and cancel the note.

⁵ Lists of all assets held by Pitcairn and Moreland and information as to their allocation are contained in the application.

⁶ Of these "persons" 61 are individuals owning approximately 10% of the Units; 4 are revocable trusts owning approximately 4% of the Units; 20 are irrevocable trusts (out of a total of 295 trusts that are Remaindermen) owning approximately .2%; one is a guardian account owning approximately .05% of the Units; and 8 are charitable organizations owning approximately 3% of the Units.

and fair to the unitholders, as not involving any overreaching of Pitcairn or its unitholders, and as serving the broader family purpose by permitting a complete separation of the Separating Members. Applicants state that, with one exception, no person who participated in the negotiations on behalf of Pitco or the Remaindermen have interests on both sides of the Redemption and the Related Transaction. One individual partner of Pitcairn, who has agreed to resign as such, has been aligned with the Separating Members and is a general and limited partner of Johnstone. Applicants represent that his alignment with the Separating Members was recognized, and he was not a member of the Sellers' Committee, nor did he participate in the negotiations except as a facilitator for the December 1993 meetings. He officially abstained from voting either on behalf of Pitcairn or Johnstone with respect to the Redemption and the Related Transaction, but has expressed his support for the transactions.

Applicants' Legal Conclusions

1. Section 23(c), made applicable to Pitcairn as a BDC by section 63 of the Act, generally prohibits BDCs from purchasing their securities except in the open market or pursuant to a tender offer. Absent such circumstances, section 23(c)(3) allows the SEC to issue an order for the protection of investors to ensure that such purchases are made in a way that does not unfairly discriminate against any holders of the class of securities to be purchased.

2. Applicants concede that the Redemption does not fall within the exceptions specified in section 23(c); consequently, Pitcairn must seek exemptive relief under section 23(c)(3). Applicants submit that the Redemption does not unfairly discriminate against either the Remaindermen or the Separating Members, and that the liquidity provided to Johnstone in the Redemption and the Related Transaction is not inappropriate under the circumstances, given the fairness of the values and the objectives of the Remaindermen to use the services of Pitco and PTC as a family office.

3. Section 57(a)(2), in conjunction with section 57(b), prohibits certain persons related to a BDC from purchasing any security or other property (with the exception of securities of which the seller is the issuer) from the BDC or a company controlled by the BDC. Section 57(b) provides, in part, that the persons affected by section 57(a) include any person that directly or indirectly

controls the BDC. Section 2(a)(9) defines control as the power to exercise a controlling influence over the management or policies of a company, and establishes a rebuttable presumption that a person owning more than 25% of the voting securities of a company controls that company. Since Johnstone, which owns approximately 39% of the Units, could be deemed to control Pitcairn, section 57(a)(2) would prohibit the Redemption absent an exemption. As Moreland may be deemed to be controlled by Pitcairn by virtue of the fact that Pitco (a wholly-owned subsidiary of Pitcairn) is its sole general partner, section 57(a)(2) also would prohibit Johnstone from buying assets from Moreland in the Related Transaction.

4. Section 57(c) provides that a person may file an application for an exemption from the provisions of section 57(a) (1) through (3), and that the SEC shall exempt a proposed transaction from the prohibitions of section 57(a)(2) if: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of anyone involved; (b) the proposed transaction is consistent with the policy of the BDC as set forth in its filings with the SEC under the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act"), and its reports to shareholders or partners; and (c) the proposed transaction is consistent with the general purpose of the Act.

5. Applicants submit that the Redemption and the Related Transaction meet the standards set forth in section 57(c) of the Act because: (a) The terms of the proposed purchase of assets by Johnstone in the Redemption and Related Transaction, including the consideration to be paid, will be reasonable and fair, and no individual will derive any personal financial gain from the proposed transaction other than benefits that will be realized by all unitholders of Pitcairn on a *pro rata* basis; (b) the proposed Redemption is consistent with Pitcairn's policy as set forth in section 4.13 of the partnership agreement, which specifically contemplates the withdrawal of limited partners on terms approved by the general partners of Pitcairn (which approval has been obtained), and also is consistent with Pitcairn's policy as recited in its filings with the SEC under the Exchange Act and its reports to unitholders; (c) the Redemption and the Related Transaction are both consistent with the general purposes of the Act; and (d) given the objective of the Remaindermen to continue to use Pitco

and PTC as a family office for the management of their financial affairs and the concomitant desire of the Separating Members to terminate that association, it would be impossible to effect the Redemption by exchanging a portion of each of Pitcairn's assets for the Units held by Johnstone on a *pro rata* basis or by selling the Units held by Johnstone to a third party because no such market exists.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 35-26264]

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

March 31, 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 April 24, 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.

Indiana Michigan Power Company (70-6458)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American