

20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-95-13 and should be submitted by December 19, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 95-28934 Filed 11-27-95; 8:45 am]

BILLING CODE 8010-01-M

**[Investment Company Act Release No. 21523; 811-4761]**

**Flagship Pennsylvania Triple Tax Exempt Fund; Notice of Application**

November 20, 1995.

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

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Flagship Pennsylvania Triple Tax Exempt Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring it has ceased to be an investment company.

**FILING DATE:** The application was filed on September 25, 1995, and amended on November 7, 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 15, 1995, 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 issue 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, One Dayton Centre, One South Main Street, Dayton, Ohio 45402.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney at (202) 942-0574, or Alison E. Bauer, 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 SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is an open-end investment company organized as an unincorporated Pennsylvania common law trust. On July 23, 1986, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 on Form N-1A. Applicant's registration statement was declared effective on September 10, 1986 and applicant's initial public offering commenced promptly thereafter.

2. On December 9, 1994, applicant's trustees, including the independent trustees, unanimously approved an asset purchase agreement (the "Agreement") under which applicant's assets and liabilities would be sold to Flagship Tax Exempt Funds Trust (the "Trust"), a registered open-end investment company with the same investment adviser as the applicant.

3. Applicant has existed separately from the Trust solely because of Pennsylvania tax law. Because of changes in Pennsylvania tax law, it was no longer necessary for applicant to continue to operate separately. Accordingly, and in compliance with rule 17a-8 under the Act, the applicant's Board of Trustees determined that the Agreement and merger into the Trust was in the best interests of the applicant and that the interest of the existing shareholders would not be diluted as a result of the transaction. In addition, the Board determined that permitting applicant's business to continue as a series of the Trust should result in cost savings and more efficient operations.

4. Proxy statements were filed with the SEC and distributed to applicant's shareholders on or about March 6, 1995. At the shareholder's meeting held on April 21, 1995, applicant's shareholders approved the sale of assets of the Trust.

5. On May 31, 1995, applicant's net assets were transferred to the Trust in exchange for a number of shares of Flagship Pennsylvania Triple Tax Exempt Fund, a series of the Trust ("new Pennsylvania fund"), at the same net asset value and for the same number of shares as applicant's shares of beneficial interest outstanding on such date. Each shareholder of applicant became an owner of new Pennsylvania fund shares equal in number and aggregate net asset value to shares held immediately prior to the transaction. No

fees or brokerage commissions were paid.

6. The expenses incurred in connection with the sale of assets were primarily legal and accounting fees, and printing and mailing costs associated with the distribution of the proxy statement. These costs were all borne by applicant.

7. As of the filing date of this application, applicant had no assets and no debts or liabilities. Applicant has no shareholders, and is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. On May 31, 1995, applicant dissolved pursuant to the requirements of Pennsylvania law.

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

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 95-28928 Filed 11-27-95; 8:45 am]

BILLING CODE 8010-01-M

**[Rel. No. IA-1537; 803-096]**

**Foster Industries, Inc.; Notice of Application**

November 20, 1995.

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

**ACTION:** Notice of Application for Exemption under the Investment Advisers Act of 1940 (the "Advisers Act").

**APPLICANT:** Foster Industries, Inc.

**RELEVANT ADVISERS ACT SECTIONS:** Sections 206A and 205(a)(1).

**SUMMARY OF APPLICATION:** Applicant is a corporation engaged solely in the business of investing for the benefit of fifteen natural persons, ten trusts, and five custodianships. All such natural persons, and the beneficiaries of the trusts and custodianships, are related to one family. Applicant requests an order to permit registered investment advisers to charge it performance-based advisory fees.

**FILING DATE:** The application was filed on February 27, 1995 and amended on June 23, 1995, September 19, 1995. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

**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

<sup>5</sup> 17 CFR 200.30-3(a)(12) (1994).

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 15, 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 5th Street, N.W., Washington, D.C. 20549. Applicant, 681 Andersen Drive, Pittsburgh, PA 15220.

**FOR FURTHER INFORMATION CONTACT:** James M. Curtis, Senior Counsel, at (202) 942-0563, or Robert A. Robertson, 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 at the SEC's Public Reference Branch.

#### Applicant's Representations

1. Applicant is a Pennsylvania corporation formed as an operating company in 1918 by four brothers of the Foster Family.<sup>1</sup> In 1977, the Foster Family business was sold and the proceeds of sale were retained by applicant and have been managed since that time by applicant on a collective basis for the benefit of applicant's shareholders. Since 1977, applicant has been engaged solely in the business of investing such funds under management as a private investment fund exempt from registration as an investment company pursuant to section 3(c)(1) of the Investment Company Act of 1940. Applicant requests an order under section 206A of the Advisers Act that would permit registered investment advisers to charge it performance-based advisory fees.

2. Applicant is essentially a Foster Family investment vehicle which, as of December 31, 1994, had total assets of approximately \$62.1 million. Applicant has one class of stock outstanding held by thirty shareholders of record, fifteen of which are individual Foster Family members, ten of which are irrevocable trusts established for the benefit of one or more Foster Family members (the "Trusts"), and five of which are

custodianships established under the Pennsylvania Uniform Gifts to Minors Act for the benefit of five Foster Family members who are currently minors (the "Custodianships"). The assets to be delivered out of the Trusts and Custodianships to each beneficiary will be so delivered, in the case of the Trusts, when all of such beneficiary's ancestors have passed away, and, in the case of the Custodianships, when the beneficiaries reach the age of majority.

3. All investment decisions are made for applicant by its board of directors, which consists of nine members, seven of whom are Foster Family members. Applicant's president and his staff prepare and present an analysis of each prospective investment to the investment committee (the "Investment Committee") and the board of directors. The Investment Committee recommends investment proposals favorably reviewed by it to the board of directors for approval.

4. None of the president, the other officers or directors receive any compensation determined on the basis of a share of capital gains upon, or capital appreciation of, all or any portion of the invested assets of applicant. However, applicant may in the future adopt an incentive compensation plan for its officers that may provide for compensation based on profitability. Neither the president, nor any other officer who is not also a Foster Family member, is the legal or beneficial owner of any shares of applicant's stock. Each officer and director is and will continue to be wholly unaffiliated with any registered investment adviser providing services to applicant.

5. Applicant contemplates entering into performance fee agreements from time to time with registered investment advisers. Under investment guidelines to be adopted by the board of directors in connection with such performance fee agreements, not more than 5% of applicant's assets will be invested at any one time under any single performance fee agreement, and not more than 25% of applicant's assets will be invested under all performance fee agreements at any one time. In addition, the investment guidelines will require that all performance fee agreements must meet the requirements of sections (c), (d), and (e) of rule 205-3.

6. Of applicant's thirty shareholders, twelve of the fifteen individual shareholders and four of the ten Trusts (the "Qualified Shareholders") qualify under the client eligibility requirements of rule 205-3(b) under the Advisers Act. The remaining three individuals, six trusts, and five Custodianships (the

"Unqualified Shareholders") do not individually satisfy the net worth requirement of rule 205-3(b).<sup>2</sup> The Qualified Shareholder hold in the aggregate 91.63% of applicant's shares, and the Unqualified Shareholders hold the remaining 8.37%. Except for the presence of the Unqualified Shareholders, the requirements of rule 205-3(b) are satisfied with respect to applicant and its shareholders in all respects.

7. Applicant is party to a shareholders' agreement which requires it to purchase any of its shares tendered for redemption at a price which generally reflects the fair market value of its investments, less certain reserves, and subject to its right to distribute to a redeeming shareholder in partial satisfaction of such obligation such shareholder's *pro rata* portion of certain illiquid investments. Applicant represents that no shareholder will transfer any shares of applicant other than to applicant or to either one or more Foster Family members or to one or more trusts or custodianships established solely for the benefit of Foster Family members where each such trust or custodianship is either a Qualified Shareholder or has at least one Qualified Shareholder Foster Family member as a trustee or custodian, as applicable.

8. Applicant desires that the requested exemptive order be applicable not only with respect to the current Unqualified Shareholders but also with respect to any future Unqualified Shareholder who is either an individual Foster Family member or a trust or custodianship where such trust or custodianship has at least one Qualified Shareholder Foster Family member as a trustee or custodian, as the case may be, and one or more Foster Family members as its sole beneficiaries. All such Foster Family members, trusts, and custodianships will comply with the representations set forth in this application.

#### Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits a registered investment adviser from receiving compensation on the basis of a share of capital gains in or capital appreciation of a client's account. Section 206A of the Advisers Act provides that the SEC may exempt any person or transaction

<sup>2</sup> As applicant contemplates entering into several performance fee agreements with different registered investment advisers, it is unlikely that Unqualified Shareholders will satisfy the alternative requirement of rule 205-3(b) of having \$500,000 under the management of each applicant's registered investment adviser.

<sup>1</sup> "Foster Family" means (i) all lineal or adopted descendants of the four founding Foster brothers, (ii) all spouses of such descendants, and (iii) all in-laws of any founding Foster brother.

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.*

[FR Doc. 95-28933 Filed 11-27-95; 8:45 am]

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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).<sup>1</sup> Approximately 22.7% of the Units are owned directly by individual Family members and 69.4% are held in various irrevocable trusts created 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").<sup>2</sup> None of the individuals, trust, or Family-Related

<sup>1</sup> 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.

<sup>2</sup> 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.