

advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f-2 under the Act.

4. Applicants note that the Commission recently adopted certain fund governance standards,<sup>2</sup> and applicants agree that each Fund will comply with the fund governance standards set forth in rule 0-1(a)(7) under the Act by the compliance date set forth in the Adopting Release. Applicants also note that the Commission has proposed rule 15a-5 under the Act and agree that the requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.<sup>3</sup>

#### Applicants' Conditions

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

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Each Fund will comply with the fund governance standards set forth in rule 0-1(a)(7) under the Act by the compliance date set forth in the Adopting Release ("Compliance Date"). Prior to the Compliance Date, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees. Any person who acts as legal counsel for the Independent Trustees will be an independent legal counsel, as defined in rule 0-1(a)(6) under the Act.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

7. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the affected Fund with all information about the new Subadviser that would be included in a proxy statement. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

8. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (iii) allocate and, when appropriate, reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies, and restrictions.

9. No trustee or officer of the Funds, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly-

traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

10. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4-3170 Filed 11-15-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27909]

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

November 9, 2004.

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 under the Act. 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 amendment(s) is/are available for public inspection through the Commission's Branch 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 December 6, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, 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 the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts 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 December 6, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **Harbert Distressed Investment Master Fund, Ltd. (70-10259)**

Harbert Distressed Investment Master Fund, Ltd., c/o 555 Madison Avenue, 16th Floor, New York, NY 10022, on its own behalf and on behalf of funds and

<sup>2</sup>Investment Company Act Release No. 16520 (July 27, 2004) ("Adopting Release").

<sup>3</sup>Investment Company Act Release No. 26230 (Oct. 23, 2003).

managed accounts ("Harbert" and "Applicant"), has filed an application ("Application") requesting an exemption under section 3(a)(4) of the Act from all provisions of the Act except section 9(a)(2).

The Application is filed in connection with Harbert's anticipation that funds and accounts managed by it will receive, in the aggregate, more than 10% of the voting securities of a public-utility company, the reorganized NorthWestern Corporation ("NorthWestern" and "Debtor"), pursuant to Debtor's Second Amended and Restated Plan of Reorganization dated August 27, 2004 ("Plan of Reorganization") under Chapter 11 of the United States Bankruptcy Code ("Chapter 11"), filed in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").<sup>1</sup>

Harbert Management Corporation ("HMC"), founded in 1945, is a privately held firm that specializes in non-traditional money management activities. HMC serves pension trusts, endowments and foundations, pension funds, banks, insurance companies, family offices, and high net worth individuals. HMC has sponsored numerous funds, including Harbert. Harbert's investment team also manages a separate managed account, Alpha Sub US Fund VI, LLC ("Alpha"). HMC has a diversified portfolio of assets under management. Investments range across a wide variety of industries; diversification across asset classes is a fundamental goal.

HMC Investments, Inc., a wholly owned subsidiary of HMC, is a registered broker/dealer and member NASD, SIPC. The Harbinger Group, Inc., an indirect wholly owned subsidiary of HMC, is an investment advisor registered with the Commission.

Applicant states that neither HMC nor any of the funds or accounts managed by it is currently a "public-utility company," a "public-utility holding company," or an "affiliate" of a public-utility company or public-utility holding company within the meaning of the Act.

As detailed in the Disclosure Statement dated August 27, 2004 ("Disclosure Statement"), filed in connection with the Plan of Reorganization, NorthWestern is a stand-alone public-utility company engaged in the generation, transmission and distribution of electricity and the distribution of natural gas to approximately 608,000 customers in Montana, South Dakota and Nebraska.

NorthWestern is subject to the jurisdiction of the Federal Energy Regulatory Commission with respect to the issuance of securities and the setting of wholesale electric rates. Its Montana operations are subject to the jurisdiction of the Montana Public Service Commission and its South Dakota operations, to the jurisdiction of the South Dakota Public Utilities Commission.

On September 14, 2003, NorthWestern filed a petition for relief under Chapter 11. In the succeeding eleven months, NorthWestern, as debtor-in-possession, negotiated with creditors, state regulators, and other parties, a plan of reorganization that provides for the reorganization of the utility as a stand-alone company. In so doing, NorthWestern has divested nearly all of its interests in nonutility businesses. Under the Plan of Reorganization, NorthWestern's unsecured creditors will receive *pro rata* distributions of all of the common stock of a reorganized NorthWestern (subject only to dilution by relatively small amounts of stock issued pursuant to a management incentive plan). NorthWestern will continue to operate as a public-utility company.

Applicant states that, as part of their investment strategies, Harbert and Alpha regularly attempt to identify undervalued securities of financially distressed companies. Both hold publicly traded Senior Notes of NorthWestern issued in 2002. Harbert acquired these securities in the ordinary course of its business on behalf of the managed funds and accounts. Harbert or its administered funds also own beneficially several issuances of NorthWestern's subordinated debt securities. These securities were acquired for investment purposes and continue to be held exclusively for such purposes.

Harbert was active in the reorganization proceedings and engaged in negotiations with NorthWestern, other creditor groups, and other parties to develop the Plan of Reorganization. Applicant states that the Plan of Reorganization has broad support. A hearing on confirmation was held on August 25, 2004 and concluded on October 6, 2004. The requested effective date is no later than November 1, 2004.

Under the Plan of Reorganization, the funds and accounts managed by Harbert expect to receive, in the aggregate, up to a maximum of approximately 26.5% of the common stock of reorganized NorthWestern, if Harbert and affiliates

were to exercise all available warrants.<sup>2</sup> Applicant states that it is entitled to exemption under section 3(a)(4) because it will be "temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted." Harbert requests an exemption under section 3(a)(4) for a period of up to three years. Harbert plans to reduce its aggregate holdings to less than 10% of NorthWestern's voting securities in a manner that will enable Harbert to maximize its return on the investment over the three-year period.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4-3169 Filed 11-15-04; 8:45 am]

**BILLING CODE 8010-01-P**

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## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of Waiver of the Nonmanufacturer Rule for Other Communications Equipment Manufacturing.

**SUMMARY:** The U. S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Other Communications Equipment Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or awarded through the SBA's 8(a) Business Development Program.

**DATES:** This waiver is effective December 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or by e-mail at [edith.butler@sba.gov](mailto:edith.butler@sba.gov).

<sup>2</sup> Under the Plan of Reorganization, this percentage could be affected if certain unsecured creditors elect not to receive distributions of common stock of reorganized NorthWestern. This event would increase the percentage of the common stock distributed to the remaining unsecured creditors, including the Harbert funds and accounts.

<sup>1</sup> In re NorthWestern Corp., Case No. 03-12872 (CGC) (Bankr. D. Del.) (filed Sept. 14, 2003).