connection with the reorganization were paid by applicant.

*Filing Dates:* The application was filed on January 21, 2004, and amended on March 11, 2004.

*Applicant's Address:* 1 Parkview Plaza, Oakbrook Terrace, IL 60181–5555.

**Van Kampen Senior Floating Rate Fund [File No. 811–8589]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 13, 2003, applicant transferred its assets to Van Kampen Senior Loan Fund (formerly known as Van Kampen Prime Rate Income Trust), based on net asset value. Expenses of $410,065 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

*Filing Dates:* The application was filed on January 21, 2004, and amended on March 11, 2004.

*Applicant's Address:* 1 Parkview Plaza, Oakbrook Terrace, IL 60181–5555.

**PIMCO Diversified Income Fund [File No. 811–21361]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on February 9, 2004, and amended on March 9, 2004.

*Applicant's Address:* 1345 Avenue of the Americas, New York, NY 10105.

**Separate Account Ten of Integrity Life Insurance Co. [File No. 811–08645]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders on December 5, 2003 approved applicant's merger with another fund, and applicant distributed its assets on December 15, 2003. The fund surviving the merger is the Touchstone Enhanced Dividend 30 Fund. Touchstone Advisors. Inc., investment adviser to Separate Account Ten of Integrity Life Insurance Company, paid expenses of $102,000 incurred in connection with the merger.

*Filing Date:* The application was filed on January 22, 2004.

*Applicant's Address:* 515 West Market Street, Louisville, KY 40202.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–7274 Filed 3–31–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 5, 2004:

A Closed Meeting will be held on Tuesday, April 6, 2004 at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, April 6, 2004 will be: Formal orders of investigation; institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; an adjudicatory matter; and a litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 29, 2004.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04–7483 Filed 3–30–04; 1:18 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27823]**

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

March 26, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under 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 April 20, 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 April 20, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**FirstEnergy Corp. (70–10205)**

*Notice of Proposed Amendments to Governance Documents and Termination of Shareholder Rights Plan; Order Authorizing Solicitation of Proxies*

FirstEnergy Corp. (''FirstEnergy''), 76 South Main Street, Akron, Ohio, 44308, a registered holding company has filed a declaration under sections 6(a)(2), 7, and 12(e) of the Act and rules 54, 62 and 65 under the Act.

FirstEnergy requests authority to: (1) Amend its Amended Articles of Incorporation (''Articles'') and Amended Code of Regulations (''Regulations,'') and together with the Articles, ''Governing Documents'') to eliminate or modify certain so-called ''anti-takeover'' type provisions that were originally intended, at least in part, to force persons seeking to take control of FirstEnergy to initiate arm's length

discussions with the Board of Directors; (2) terminate its shareholder rights plan; and (3) solicit proxies (''Solicitation'') from its common shareholders for use at its annual meeting scheduled for May 18, 2004, and at any adjournment(s), in connection with (a) the proposed amendments to the Governing Documents and (b) certain executive compensation plans (and related amendments) providing for the issuance of shares of FirstEnergy common stock.

**I. Requested Authority**

*A. Amendments to Governing Documents*

FirstEnergy proposed to amend its Governing Documents to declassify its Board of Directors and eliminate certain supermajority shareholder voting requirements.

1. Declassification of Board Directors

FirstEnergy's Regulations currently provide that the Board of Directors is to be divided into three classes with the members of each class serving three-year terms. The Board currently consists of fifteen members divided into three classes. The Board of Directors has unanimously adopted resolutions, subject to shareholder and regulatory approvals, amending the Regulations to eliminate the classification of Board members. The proposal would allow for the annual election of directors beginning with the director slate to be voted upon at FirstEnergy's 2005 annual meeting. Directors who have been previously elected for three-year term so that no director previously elected to a multi-year would have his or her term shortened. Consequently, under the proposed amendments, the first class of directors to be elected to one-year terms would be in 2005. Directors standing for election in 2006 and 2007 would likewise be elected to one-year terms so that upon the conclusion of the annual meeting in 2007, the declassification of the Board would be complete and all directors would be subject to annual elections.

FirstEnergy states that a shareholder proposal to declassify the Board of Directors has been received by FirstEnergy and included in its proxy material each year since 1998. Each year, the Board of Directors has considered carefully the advantages and disadvantages of maintaining a classified board. FirstEnergy indicates that while the Board of Directors still believes that there are compelling reasons to maintain a classified board, in furtherance of its goal of ensuring sound corporate governance policies, after further consideration of the various arguments for and against a classified board, and in light of the amount of shareholder support for a similar proposal at the 2003 annual meeting, the Board has decided to propose declassifying the board. Approval of the proposal requires the affirmative vote of the holders of at least 80% of the voting power of FirstEnergy, voting as a single class.

2. Elimination of Certain Supermajority Voting Rights

FirstEnergy indicates that it will ask its shareholders to consider and vote upon a proposal to amend regulation 36 of the Regulations and to repeal Article X of the Articles, which relate to the voting requirements for amending or repealing certain provisions in the Governing Documents.

Currently the affirmative vote of 80% of the shares entitled to vote, voting as a single class (together, ''80% Supermajority'') is required to make certain amendments to the Governing Documents. FirstEnergy's Board of Directors is proposing that the 80% Supermajority voting requirements be changed in the Governing Documents to reduce the voting requirements to two-thirds, which is consistent with Ohio law. Approval of this proposal requires the affirmative vote of 80% of the shares entitled to vote.

Article X of the Articles establishes an 80% Supermajority requirement to amend or repeal the following provisions: (1) Article V—the fixing or changing of the terms of unissued or treasury shares; (2) article VI—The absence of cumulative voting rights in the election of directors; (3) article VII—the absence of preemptive rights to acquire unissued shares; and (4) article VIII—the ability of FirstEnergy to repurchase its shares. Similarly, regulation 36 of the Regulations also establishes an 80% Supermajority requirement to amend or repeal the following provisions: (1) Regulation 1—the time and place of shareholder meetings; (2) regulation 3(a)—the calling of special shareholder meetings; (3) regulation 9—the order of business at shareholder meetings; (4) regulation 11—the number, election and term of directors; (5) regulation 12—the manner of filling vacancies on the Board of Directors; (6) regulation 13—the removal of directors; (7) regulation 14—the nomination of directors and elections; and (8) regulation 31—the indemnification of directors and officers. Both article X and regulation 36 require an 80% Supermajority vote to be amended or repealed.

In addition, FirstEnergy's Board of Directors proposes to change the voting requirement in regulations 11 and 13. Currently, regulation 11 enables a change in the number of Directors of FirstEnergy and regulation 13 provides that any Director, or the entire Board, may be removed, in each case only by an 80% Supermajority vote. The Board of Directors proposes to reduce this in both cases to two-thirds.

FirstEnergy states that, while these protective measures are beneficial, the Board believes there are also compelling arguments for having a lower threshold for shareholder amendments to the Governing Documents. For example, in recent years some investors have expressed the view that a lower threshold for shareholder amendments in the Governing Documents may improve the corporate governance profile of FirstEnergy, in that it allows increased flexibility in responding to unforeseen challenges and increases shareholders' ability to effectively participate in corporate governance.

FirstEnergy indicates that similar amendments seeking to remove the 80% Supermajority voting requirement from the Regulations and the Articles have been proposed by FirstEnergy's shareholders in the past and have received support at Annual Meetings. Given the amount of shareholder support for the proposal and following careful assessment, FirstEnergy states that the Board of Directors has decided to propose the elimination of the 80% Supermajority voting requirement.

*B. Termination of Shareholder Rights Plan*

In November 1997, the Board of Directors of FirstEnergy authorized assignment of one share purchase right (''Right'') for each outstanding share of FirstEnergy common stock. The Rights are issued under to a Rights Agreement dated as of November 18, 1997 between FirstEnergy and The Bank of New York, as rights agent, (''Rights Agreement'') which was approved by the Commission (Holding Company Act Release No. 35–27694). Each Right entitles the registered holder of the associated share of common stock to purchase from FirstEnergy one share of common stock at a price of $70 per share (''Purchase Price'') when the rights become exercisable. The Rights, which currently expire on November 18, 2007, are not exercisable until a triggering event involving either an acquisition of 15% or more of the outstanding common stock of FirstEnergy by any person or group of associated persons (''Acquiring Person'') or the commencement or announcement of an intention to make a tender offer by any Acquiring person of at least 25% of the outstanding

common stock of FirstEnergy. In the event of a merger with, or other specified transaction (as described in the Rights Agreement) between FirstEnergy and an Acquiring Person, the holder of each Right would be entitled to receive, upon exercise of the Right, a number of shares of common stock of FirstEnergy or the Acquiring Person, as the case may be, having a value double the amount of the purchase price.

FirstEnergy's indicates that its Board of Directors has elected, subject to receipt of Commission authorization, to terminate the Rights Agreement through the acceleration of the expiration date of the issued Rights. FirstEnergy states that as is the case with previous shareholder proposals to declassify the Board of Directors and to eliminate the 80% Supermajority voting requirements, the Board of Directors has considered carefully the advantages and disadvantages of the Rights Agreement, and that while the Board of Directors still believes that there are compelling reasons to maintain the Rights Agreement, in furtherance of its goal of ensuring sound corporate governance policies, after further consideration of the various arguments for and against rights plans in general, and in light of the amount of shareholder support for a similar proposal at the 2003 annual meeting, the Board has taken action to accelerate the expiration date of the outstanding Rights to March 31, 2004, or such later date as the Commission issues an order. FirstEnergy indicates that no shareholder approval is needed to terminate the Rights Agreement.

**II. Order for Solicitation of Proxies**

FirstEnergy has requested that an order be issued authorizing commencement of the solicitation of proxies from the holders of the outstanding shares of common stock for approval of (1) the proposed amendments to the Governing Documents as discussed above, and (2) certain executive compensation plans (and related amendments) providing for the issuance of shares of FirstEnergy common stock. FirstEnergy's shareholders will be asked to approve FirstEnergy's existing Executive Deferred Compensation Plan, which was established by the Board of Directors in 1985, and Deferred Compensation Plan for Outside Directors, which was established by the Board of Directors in 1997 (collectively, ''Plans''). The Plans were previously approved by the Commission (Holding Company Act Release No. 35–27694). The Plans have not been previously approved by FirstEnergy's shareholders, as approval was not required. However, in order to comply with listing requirements of the New York Stock Exchange adopted in 2003, both Plans must be submitted to the shareholders for approval, because they contain a matching or bonus formula that credits additional shares of stock to a participant's account based on the amount of deferrals. The NYSE listing standards also require that these features contain either a fixed term of no more than ten years or a maximum share reserve. The Board of Directors is proposing to amend the Plans to add both of these features. These proposed amendments will not increase the number of shares of common stock or common stock equivalents that FirstEnergy is already authorized to issue.

It appears to the Commission that FirstEnergy's Declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

**III. Rule 54 Analysis**

The proposed transactions are subject to the requirements of rules 53 and 54 under the Act. Under rule 53(a), the Commission shall not make certain specified findings under sections 7 and 12 in connection with a proposal by a holding company to issue securities for the purpose of acquiring the securities of, or other interest in, an exempt wholesale generator (''EWG''), or to guarantee the securities of an EWG, if each of the conditions in paragraphs (a)(1) through (a)(4) of rule 53 are met, provided that none of the conditions specified in paragraphs (b)(1) through (b)(3) of rule 53 exists. Rule 54 provides that the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or foreign utility companies (''FUCOs'') in determining whether to approve other transactions if rule 53(a), (b) and (c) are satisfied.

FirstEnergy currently meets all of the conditions of rule 53(a), except for clause (1). By order dated October 29, 2001 (Holding Company Act Release No. 35–27459) (''Merger Order''), as modified by order dated June 30, 2003 (Holding Company Act Release No. 35–27694) (''June 2003 Order''), the Commission, among other things, authorized FirstEnergy to invest in EWGs and FUCOs as long as FirstEnergy's aggregate investment, as defined in rule 53(a)(1) does not exceed $5 billion. The $5 billion amount is greater than the amount which would be permitted by rule 53(a)(1) which, based on FirstEnergy's consolidated retained earnings, as defined in rule 53(a)(1), of $1.6 billion as of December 31, 2003 would be $800 million. The Merger Order, as modified by the June 2003 Order, also specifies that this $5 billion amount may include amounts invested in EWGs and FUCOs by FirstEnergy and GPU, Inc., at the time of the Merger Order (''Current Investments'') and amounts relating to possible transfers to EWGs of certain generating facilities owned by certain of FirstEnergy's operating utilities (''GenCo Investments'').

Under the Merger Order, the Commission reserved jurisdiction over investment in EWGs and FUCOs, other than the Current Investments and GenCo Investments, that exceed $1.5 billion. As of December 31, 2003, and on the same basis as set forth in the Merger Order, FirstEnergy's aggregate investment in EWGs and FUCOs was approximately $1.13 billion, an amount significantly below the $5 billion amount authorized in the Merger Order. Additionally, as of December 31, 2003, consolidated retained earnings were $1.6 billion. By way of comparison, FirstEnergy's consolidated retained earnings as of December 31, 2002 were $1.52 billion.

With respect to rule 53(b), none of the circumstances enumerated in subparagraphs (1), (2) and (3) have occurred. For the reasons given above, the requirements of rule 53(c) are satisfied.

As a result, the Commission has considered the effect on the FirstEnergy system of the capitalization or earnings of any FirstEnergy subsidiary that is an EWG or FUCO in determining whether to approve the proposed transactions. Applicants state that since the date of the Merger Order, there has been no material adverse impact on FirstEnergy's consolidated capitalization resulting from its investments in EWGs and FUCOs, and the proposed transaction will not have any material impact on FirstEnergy's capitalization. As of December 31, 2003, FirstEnergy's consolidated capitalization consisted of 40.1% common equity, 1.6% cumulative preferred stock, 55.8% long-term debt and 2.5% short-term debt. As of December 31, 2001 those ratios were as follows: 30.3% common equity, 3.1% cumulative preferred stock, 63.1% long-term debt and 3.5% short-term debt. FirstEnergy maintains that its operating public-utility subsidiaries remain financially sound companies as indicated by their investment grade ratings from nationally recognized rating agencies for their senior secured debt.

Since the date of the Merger Order, FirstEnergy's investments in EWGs and FUCOs have contributed positively to its level of earnings, other than for the negative impact on earnings due to FirstEnergy's writedowns of its investments in Avon Energy Partners Holdings and GPU Empresa Distribuidora Electrica Regional S.A. Finally, since the date of the Merger Order, and, after taking into account the effects of FirstEnergy's acquisition of GPU, there has been no material change in FirstEnergy's level of earnings from EWG's and FUCOs. On February 2, 2004 FirstEnergy announced that it had completed the sale of all of its remaining operating FUCO assets.

**IV. Conclusion**

FirstEnergy states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. FirstEnergy estimates that the total amount of all fees, commissions and expenses to be incurred in connection with the proposed transactions will not exceed $35,000. FirstEnergy has engaged the services of Innisfree M&A Incorporated to assist in the Solicitation and has agreed to pay Innisfree M&A Incorporated a fee for its services which is not expected to exceed $12,500, plus reimbursement of expenses. Solicitation will also be made in person or by telephone, mail or other electronic means, and may be made by officers and employees of FirstEnergy.

*It is ordered,* under rule 62 of the Act, that the Declaration regarding the proposed solicitation of proxies from the holders of outstanding shares of FirstEnergy common stock become effective immediately, subject to the terms and conditions of rule 24 under the Act.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04–7322 Filed 3–31–04; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49486; File No. SR–NASD–2004–036]**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify NASD Rule 7010(p)(3) To Revise and Update the Fee Schedule for OTC Bulletin Board Historical Trading Activity Reports

March 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2004, the National Association of Securities Dealers, Inc. (''NASD'') through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

Nasdaq proposes to revise and update the fee schedule for OTC Bulletin Board (''OTCBB'') historical trading activity reports. Nasdaq has stated that it would implement the revised and updated fee schedule on March 15, 2004, if the Commission approves the proposed rule change by that date, or as soon as practicable following Commission approval of the proposed rule change, if such approval occurs after March 15, 2004.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets.]

7010. System Services

(a)–(o) (No change).

(p) Historical Research and Administrative Reports

(1) (No change).

(2) (No change).

(3) The charge to be paid by the purchaser of an Historical Research Report regarding OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be [as follows] *determined in accordance with the following schedule:*

[(A) Daily Detailed Reports—$7 per day, per security and/or market participant for reports containing 15 fields or less. $15 per day, per security and/or market participant for reports exceeding 15 fields.]

[(B) Summary Level Activity Reports—$25 per report.]

| | *Number of fields of information in the report* | | |
|---|---|---|---|
| | *1–10* | *11–15* | *16 or more* |
| *A. Issues Summary Statistics.* | | | |
| *For a security for a day* | *$10* | *$15* | *$20* |
| *For a security for a month, quarter, or year* | *20* | *30* | *40* |
| *For all issues for a day* | *50* | *75* | *100* |
| *For all issues for a month, quarter, or year* | *100* | *150* | *200* |
| *B. Intra-Day Quote and Intra-Day Time and Sales Data.* | | | |
| *For a security and/or a market participant for a day* | *15* | *25* | *35* |
| *For all market participants for a day or for all securities for a day (For purposes of this report, market participants are those entities qualified to participate in the OTCBB service pursuant to NASD Rule 6540(a) and (b)).* | *30* | *40* | *50* |
| *C. Nasdaq may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.* | | | |
| *D. ALL OTCBB Issurers Directory* | | *250* | |

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.