

must be submitted to OMB within 30 days of this notice.

Dated: April 23, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-10462 Filed 4-26-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25533; 812-12808]

### Price Communications Corporation et al.; Notice of Application

April 23, 2002.

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

**ACTION:** Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the "Act") or, alternatively, section 6(c) of the Act.

**SUMMARY OF APPLICATION:** Price Communications Corporation ("Price") and Price Communications Wireless, Inc. ("PCW") and, together with Price, "Applicants") request an order under section 3(b)(2) of the Act declaring that PCW is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities or, alternatively, under section 6(c) of the Act exempting Price and PCW from all provisions of the Act for a period no longer than four years.

**FILING DATE:** The application was filed on April 17, 2002.

**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 May 21, 2002, 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, NW., Washington, DC 20549-0609. Applicants, 45 Rockefeller Plaza, New York, NY 10021.

**FOR FURTHER INFORMATION, CONTACT:** Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, 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, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. Price, a Delaware corporation, is a publicly-held company with shares listed and traded on the New York Stock Exchange that has conducted a national communications business since 1981. PCW, also a Delaware corporation, is an indirect wholly-owned subsidiary of Price and is Price's sole remaining business property. PCW and a predecessor corporation have been continuously and exclusively engaged since 1987 in the business of constructing, developing, managing and operating cellular telephone systems in the southeastern United States under licenses from the Federal Communications Commission ("FCC").

2. On December 18, 2001, Price and PCW entered into a transaction agreement ("Transaction Agreement") with Cellco Partnership ("Cellco") pursuant to which the parties agreed to form and operate a new joint venture in limited partnership form ("New LP"). PCW agreed to contribute its cellular business assets and approximately \$150 million in cash to New LP ("Contribution") in consideration for a limited partnership interest having an initial valuation of approximately \$1.150 billion (or approximately 45% of New LP's initial capital) and carrying the economic preferences and management rights set forth in New LP's Agreement of Limited Partnership ("Partnership Agreement"). New LP will be majority-owned and primarily controlled by Cellco through two wholly-owned subsidiaries which will contribute business assets, a note and cash (representing approximately 55% of New LP's initial capital). Cellco is the leading provider of wireless communications in the United States and is a joint venture between Verizon Communications, Inc. ("Verizon Communications") and Vodafone Group plc. The date on which the contributions are to be made and New LP will commence operations (the "Closing Date") is expected to occur before the end of the second quarter of 2002.

3. The acquisition of PCW's cellular operations through New LP represents a geographical expansion of Cellco's business in preparation for an initial public offering by a corporate

subsidiary, Verizon Wireless, Inc. ("Verizon Wireless"). A registration statement relating to this offering ("Verizon Wireless IPO") was filed with the Commission under the Securities Act of 1933 on November 9, 2001. Applicants state that from Price's point of view PCW's Contribution and participation in New LP represents a transitional stage in Price's movement from ownership and management of an independent wireless business to liquidation. Since the business assets to be contributed by PCW to New LP represent substantially all of Price's assets, the Contribution requires approval by the shareholders of Price and a proxy solicitation for that purpose will begin in early May 2002.

4. New LP will have a management committee ("Management Committee") consisting of three members, one appointed by PCW and two by the managing general partner. Under the Partnership Agreement, the managing general partner will need approval of a majority of the Management Committee, including the member appointed by PCW, with respect to a variety of matters relating to New LP and its business, as more fully described in the application. A Cellco subsidiary will serve as managing general partner of New LP and will have active charge of the day-to-day business operations of New LP. Applicants state that, under the Partnership Agreement, any profits of New LP will be allocated to PCW annually in an amount equal to 4% annually of PCW's capital account before any profits are allocated to Cellco's subsidiaries. Any losses incurred by New LP will be allocated to the capital accounts of Cellco's subsidiaries before being allocated to PCW.

5. If a Verizon Wireless IPO producing gross proceeds of \$4 billion and meeting certain other conditions occurs within four years from the Closing Date, PCW will have the right, subject to approval by the shareholders of Price, to exchange the limited partnership interest in New LP for Verizon Wireless shares at the initial public offering price. If the Verizon Wireless IPO does not occur within four years from the Closing Date, or PCW exercises this right but Price's shareholders do not approve that exchange, the limited partnership interest in New LP must be exchanged for shares of Verizon Communications no later than ten years after the Closing Date.<sup>1</sup> Applicants state

<sup>1</sup> A shareholder vote to approve the Contribution also will constitute approval of the exchange of PCW's limited partnership interest in New LP for

that, if a liquidation takes place, it will in all likelihood result in the distribution to Price's shareholders of the Verizon Wireless or Verizon Communications shares received in exchange for PCW's limited partnership interest in New LP. PCW's limited partnership interest in New LP generally will be nontransferable, apart from the exchanges described above.<sup>2</sup>

#### Applicants' Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, investment securities include all securities except Government securities, securities issued by employee securities companies, and securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act. Applicants state that the limited partnership interest in New LP that PCW will receive for the Contribution may cause PCW and Price to be deemed investment companies within the meaning of section 3(a)(1)(C) of the Act.

2. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses.<sup>3</sup>

shares of Verizon Communications. However, an exchange of the limited partnership interest in New LP for shares of Verizon Wireless will require a separate vote of the shareholders of Price after completion of the Verizon Wireless IPO.

<sup>2</sup> Applicants state that the only transfers permitted to PCW under the Partnership Agreement are a transfer of its entire interest in New LP in connection with its liquidation or merger with or into Price or a corporation wholly-owned by Price and a pledge of its entire interest in New LP in connection with a financing transaction. Applicants state that they have no current plans for any such financing transaction and recognize that, under the proposed conditions, any such financing transaction could result in a termination of any order granted pursuant to the application.

<sup>3</sup> Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of a company's outstanding voting

3. Applicants request an order under section 3(b)(2) declaring that, following the Contribution, notwithstanding section 3(a)(1)(C) of the Act, PCW will be primarily engaged, through New LP, in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicants state that neither Price nor PCW is now an investment company or will be an investment company within the meaning of section 3(a)(1)(A) of the Act following the Contribution.<sup>4</sup> Applicants state that New LP will be a company controlled by PCW within the meaning of the Act. Applicants submit that PCW will be primarily engaged in the cellular telephone business through its 45% ownership interest in New LP and its exercise of the management rights conferred by the Partnership Agreement.

4. Under section 3(b)(2) of the Act, in determining whether an applicant is primarily engaged in a non-investment company business, the SEC considers the following factors: (a) Applicant's historical development; (b) applicant's public representations of policy; (c) the activities of applicant's officers and directors; (d) the nature of applicant's present assets; and (e) the sources of applicant's present income.<sup>5</sup>

a. *Historical Development:* PCW states that it and its predecessor corporation have been operating companies engaged in the cellular telephone business under FCC licensing and regulation since 1987.

b. *Public Representations of Policy:* PCW states that it and its predecessor corporation have consistently held themselves out to the public as an operator of cellular telephone systems and a provider of cellular telephone services. PCW states that it never has held itself out, and does not now hold itself out, as an investment company.

c. *Activities of Officers and Directors:* PCW states that it has a sold director (who also is President and Chief Executive Officer of Price) and two executive officers. After the Contribution, Price will designate and PCW will appoint one of PCW's executive officers to serve on the Management Committee of New LP. Under the Partnership Agreement, the Management Committee will function on a variety of operating matters—such

securities controls the company, and that an owner of 25% or less of a company's outstanding voting securities does not control the company.

<sup>4</sup> Section 2(a)(1)(A) provides that an issuer is an investment company if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

<sup>5</sup> See *Tonopah Mining Company of Nevada*, 26 S.E.C. 426 (1946).

as approval of annual operating budgets, incurrence of debt, disposition of licenses, appointment on independent auditor, approval of annual financial statements and selection of technology—as well as a wide variety of major transactions and other business matters, such as mergers and consolidations, business acquisitions, acquisitions and dispositions of assets, disposition of licenses, entry into new business areas and distributions to and dealings with partners.

d. *Nature of Assets:* Applicants state that, on a pro forma basis assuming that the Contribution occurred, PCW's limited partnership interest in New LP represented approximately 97.5% of PCW's total assets on an unconsolidated basis, as of December 31, 2001. (The remaining 2.5% of PCW's total assets consisted of cash and short-term, income producing cash equivalent investments.)

e. *Sources of Income:* Applicants state that, on a pro forma basis assuming that the Contribution occurred, approximately 97.46% of its net income for the 12 months ended December 31, 2001, would have been attributable to New LP.

5. PCW asserts that it meets the requirements for an order under section 3(b)(2) of the Act. PCW agrees that, if an order under section 3(b)(2) is granted, the order will terminate without action on the part of the Commission on the earliest of (i) the date on which PCW ceases to own the limited partnership interest in New LP as described in the application, (ii) the date on which PCW makes an acquisition or disposition of assets by reason of which its limited partnership interest in New LP ceases to constitute at least 80% (or is further reduced below 80%) of the total assets of PCW on an unconsolidated basis, and (iii) the fourth anniversary of the Closing Date.

6. In the alternative, Applicants request an order under section 6(c) of the Act exempting Price and PCW from all provisions of the Act until no later than the fourth anniversary of the Closing Date. Section 6(c) provides, in relevant part, that the Commission may conditionally or unconditionally exempt any person from any provisions of the 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 Act.

7. Applicants state that neither Price nor PCW has any of the structural features, functions or objectives of an investment company, as evidenced by the identities, business activities and

strategic objectives of the parties to the Transaction Agreement, the private and commercial nature of the joint venture they propose to create and carry on through New LP, and the nontransferability of PCW's interest in New LP. Applicants state that, after the Contribution, PCW's interest in New LP will constitute more than 97% of PCW's total assets and Price's indirect interest in New LP will constitute substantially all of Price's total assets. Price has publicly announced its intention to liquidate after PCW's limited partnership interest in New LP is exchanged for shares of Verizon Wireless or Verizon Communications. Applicants also state that the conditions to the requested order under section 6(c) would further assure that the requested exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

#### Applicants' Conditions

Applicants agree that any order under section 6(c) of the Act will be subject to the following conditions:

1. Neither of the Applicants will be or will hold itself out as being engaged in the business of investing, reinvesting or trading in securities.

2. PCW will not acquire any investment securities, as that term is defined in section 3(a)(2) of the Act, except (a) the limited partnership interest in New LP described in the application and (b) for cash management purposes, certificates of deposit, bankers acceptances and time deposits maturing within 180 days from the date of acquisition, and shares of money market funds.

3. Price will not acquire any investment securities, as that term is defined in section 3(a)(2) of the Act, except securities the holding of which is consistent with the goals of preserving capital and maintaining liquidity.

4. The order will terminate on the earliest of (a) the date on which PCW ceases to own the limited partnership interest in New LP as described in the application, (b) the date on which PCW makes an acquisition or disposition of assets by reason of which its limited partnership interest in New LP ceases to constitute at least 80% (or is further reduced below 80%) of the total assets of PCW on an unconsolidated basis, (c) the date on which Price makes an acquisition or disposition of assets by reason of which Price's ownership interest in PCW ceases to constitute at least 80% (or is further reduced below 80%) of Price's total assets on an unconsolidated basis, and (d) the fourth anniversary of the Closing Date.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25532; 812-12783]

#### Wells Fargo Funds Trust and Wells Fargo Funds Management LLC; Notice of Application

April 23, 2002.

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

**ACTION:** Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets, subject to the liabilities, of certain other series of the investment company (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

**APPLICANTS:** Wells Fargo Funds Trust ("Funds Trust") and Wells Fargo Funds Management, LLC ("Funds Management").

**FILED DATES:** The application was filed on February 15, 2002, and amended on April 16, 2002. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

#### HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 16, 2002, 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 notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609; *Applicants:* C. David Messman, Esq., Wells Fargo Funds

Trust, Wells Fargo Funds Management LLC, 525 Market Street, San Francisco, California 94105; Marco E. Adelfio, Esq., Eileen M. Smiley, Esq., Morrison & Foerster LLP, 2000 Pennsylvania Avenue NW, Suite 5500, Washington, DC 20006.

#### FOR FURTHER INFORMATION CONTACT:

Deepak T. Pai, Senior Counsel, at (202) 942-0574 or Todd Kuehl, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. Funds Trust, a Delaware business trust is registered under the Act as an open-end management investment company. Funds Trust is comprised of seventy-two series, four of which are involved in the proposed Reorganization. International Equity Fund and the Small Cap Opportunities Fund are the "Acquiring Funds" and International Fund and the Small Cap Value Fund are the "Target Funds", and together with the Acquiring Funds, the "Funds." The Target Funds are feeder funds that do not invest directly in portfolio securities. Rather, each Target Fund invests in a corresponding core portfolio (each a "Core Portfolio" and collectively the "Core Portfolios,") of Wells Fargo Core Trust ("Core Trust") that has the same investment objectives and strategies as the corresponding Target Fund. Core Trust, a Delaware business trust, is registered under the Act as an open-end management investment company.

2. Funds Management serves directly as the investment adviser to each of the Acquiring Funds and serves indirectly as the investment adviser to each of the Target Funds. Funds Management serves as the investment adviser for each of the Core Portfolios of Core Trust in which the Target Funds invest. Funds Management is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Funds Management is an indirect wholly-owned subsidiary of Wells Fargo & Company. As of December 27, 2001, Wells Fargo Bank Minnesota, N.A. ("Wells Fargo, MN"), a wholly-owned subsidiary of Wells Fargo & Company, held of record with sole or shared power to vote, more than 25% of the