

pursuant to a sub-advisory agreement with the Trust.

3. Pilgrim Baxter and TS&W each are registered as an investment adviser under the Investment Advisers Act of 1940. Pilgrim Baxter and TS&W each are indirect, wholly owned subsidiaries of Old Mutual plc ("Old Mutual"), a financial services organization based in the United Kingdom.

4. The Fund will seek to provide investors with long-term growth of capital by investing primarily in small capitalization stocks. The Fund will invest at least 80% of its assets in value securities, such as common stocks, of domestic small sized companies, which include companies with equity securities traded in the U.S. securities markets with market capitalizations of \$1.3 billion or less at the time of purchase.

5. Applicants propose that, pursuant to an agreement and plan of reorganization (the "Reorganization Agreement"), the TS&W Fund will transfer to the Fund substantially all of its assets, which will consist of cash and portfolio securities with readily available market quotations and are permissible investments under the investment policies and restrictions of the Fund ("Assets"), less any funds required to pay the liabilities of the TS&W Fund, in exchange for shares (the "Shares") of the Fund (the "Exchange"). Under the Reorganization Agreement, Shares of the Fund delivered to the TS&W Fund will have an aggregate net asset value ("NAV") equal to the NAV of the Assets transferred by the TS&W Fund to the Fund. Upon the consummation of the Exchange, the Shares of the Fund will be credited to the account of each Member of the TS&W Fund, in an amount equal to the value of the Member's *pro rata* share of the Assets ("Interest") on the Closing Date. Thereafter, the TS&W Fund will liquidate. The Exchange is scheduled to occur on or about July 25, 2003. No brokerage commissions, fees (except for customary transfer fees, if any) or other remuneration will be paid by the Fund or the TS&W Fund in connection with the Exchange. TS&W will pay the expenses of the TS&W Fund and the Fund will pay its own expenses incurred in connection with the Exchange. Applicants have agreed not to make any material changes to the Reorganization Agreement without prior approval of the Commission or its staff.

6. On May 6, 2003, the board of trustees of the Trust ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), approved the

Exchange. In approving the Exchange, the Board concluded that: (a) The Exchange is consistent with the policies of the Fund, as recited in its registration statement, (b) the terms of the Exchange, including the consideration to be received by the Fund, are reasonable and fair and do not involve overreaching on the part of any person concerned, and (c) participation by the Fund in the Exchange is in the best interests of the Fund and its shareholders and the interests of existing shareholders of the Fund will not be diluted as a result of the Exchange. These findings, and the basis upon which such findings were made, are recorded in the minute books of the Trust.

7. With respect to the TS&W Fund, TS&W (as TS&W Fund's managing Member) believes that the Exchange is in the best interests of the TS&W Fund and its Members. The Exchange is required to be approved by Members of the TS&W Fund that represent more than 50% of the aggregate value of the outstanding Interests of the TS&W Fund.

8. The Exchange will not be effected until: (a) The Commission has issued the requested order; (b) Members of the TS&W Fund that represent more than 50% of the aggregate value of the outstanding Interests in the TS&W Fund have consented to: (i) The TS&W Fund's participation in the Exchange and (ii) an amendment to TS&W Fund's operating agreement that permits the TS&W Fund to redeem, immediately prior to the effectiveness of the Exchange, the Interest of any Member that has not consented to the Exchange; and (c) the Trust and the TS&W Fund have received an opinion of counsel substantially to the effect that the Exchange will not result in taxable income to the Fund, the TS&W Fund, or the Members.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by, or under common control with, the other person; any officer, director, partner, copartner or employee of the other person; and, if

the other person is an investment company, its investment adviser.

2. Applicants state that the TS&W Fund could be deemed to be an affiliated person of an affiliated person of the Fund because TS&W and Pilgrim Baxter might be deemed to be under the common control of Old Mutual. Thus, applicants state that the proposed Exchange may be prohibited under section 17(a) of the Act.

3. Rule 17a-7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, investment advisers that are affiliated persons of each other, common directors, and/or common officers, provided, among other requirements, that the transaction is for no consideration other than cash. Applicants state that the relief provided by rule 17a-7 may not be available for the Exchange because the Exchange will involve consideration other than cash (*i.e.*, Shares of the Fund). Applicants also state that the TS&W Fund may be deemed to be affiliated with the Fund for reasons other than those set forth in rule 17a-7.

4. Rule 17a-8 exempts certain transactions (including mergers, consolidations or purchases or sales of substantially all of the assets of a company) between registered investment companies and eligible unregistered funds, as defined in rule 17a-8 ("Eligible Unregistered Fund"). Applicants state that the relief provided by rule 17a-8 is not available for the Exchange because the TS&W Fund is not a registered investment company or an Eligible Unregistered Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

6. Applicants submit that the terms of the Exchange meet the criteria contained in section 17(b) of the Act. Applicants state that the Shares issued by the Fund will have an aggregate NAV equal to the NAV of the assets acquired from the TS&W Fund, determined in accordance with rule 17a-7 under the Act and the Fund's valuation policies as disclosed in its registration statement. Applicants also state that the investment objective and policies of the Fund are substantially similar to those