

SECURITIES AND EXCHANGE COMMISSION

[Release. No. IC-26207; 812-12971]

Hennion & Walsh, Inc., et al.; Notice of Application

October 14, 2003.

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

ACTION: Notice of an application under: (i) Section 6(c) of the Investment Company Act of 1940 ("Act") for exemptions from sections 14(a) and 19(a) of the Act and from rule 19b-1 thereunder; (ii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act; and (iii) section 12(d)(1)(F) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants Hennion & Walsh, Inc. ("Sponsor"), Smart Trust, Equity Securities Trust, Symphony Series, and EST Symphony Trust, as well as any other registered unit investment trust ("UIT") for which the Sponsor serves as the sponsor in the future (collectively, "Trusts") and any presently outstanding or subsequently issued series of the Trusts (each, a "Trust Series") request an order: (a) Under section 12(d)(1)(F) of the Act to permit each Trust Series to offer and sell to the public units ("Units") with a sales load that exceeds the 1.5 % limit in section 12(d)(1)(F)(ii) of the Act; (b) under sections 6(c) and 17(b) for an exemption from section 17(a) of the Act to permit the Trust Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act for exemptions from sections 14(a) and 19(b) of the Act and rule 19b-1 under the Act to permit Units to be publicly offered without requiring the Sponsor to take for its own account or place with others \$100,000 worth of Units, and to permit the Trust Series to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FILING DATES: The application was filed on May 1, 2003 and amended on October 2, 2003.

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 November 7, 2003 and should be accompanied by proof of

service on the 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: Peter J. DeMarco, c/o Hennion & Walsh, Inc., 2002 Route 46, Waterview Plaza, Parsippany, New Jersey 07054.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicants' Representations

1. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the sponsor for the Trusts.¹ Each Trust Series is or will be a UIT registered under the Act and organized under a trust indenture that incorporates or will incorporate by reference a master trust agreement between the Sponsor and a qualified bank as trustee ("Trustee"). Pursuant to the trust indenture, the Sponsor will deposit into each Trust Series shares of existing registered investment companies ("Funds"), or contracts and monies for the purchase of shares of the Funds. The Funds will be closed-end or open-end investment companies or UITs. Certain of the Funds are open-end investment companies or UITs that have received exemptive relief under the Act to sell their shares at negotiated prices on an exchange ("Exchange Traded Funds").

2. The purpose of each Trust Series is to provide retail investors (1) an investment with a professionally selected asset allocation model or investment theme based upon the Sponsor's assessment of the overall economic climate and financial markets, and (2) the opportunity for income and/

or capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the total population of available Funds within the various market sectors of the Sponsor's asset allocation model or consistent with the enunciated investment theme. Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates ("Affiliated Funds"). Applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor ("Unaffiliated Funds"). Applicants state that the Trust Series' investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. The only Funds that will be eligible for inclusion in a Trust Series are either no load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Trust Series. Shares of each of the Funds (except closed-end Funds and Exchange Traded Funds), therefore, will be sold for deposit into any Trust Series at net asset value. Shares of closed-end Funds and Exchange Traded Funds will be purchased by a Trust Series at market prices. Investors in the Trust Series ("Unitholders") will pay a specified sales load to the Sponsor in connection with the purchase of their Units.

4. No evaluation fee will be charged with respect to determining the value of the Funds' shares that comprise the Trust Series' portfolio. The Trustee will receive service fees under a rule 12b-1 plan from certain Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Trust Series. In such cases, the Trustee will reduce its regular fee to a Trust Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trust Series. Any fees so rebated will be utilized by the Trust Series to absorb other bona fide Trust Series expenses. To the extent that these fees exceed the total Trust Series' expenses, the excess will be distributed along with other income earned by the Trust Series.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the

¹ All existing Trusts that currently intend to rely on the requested order have been named as applicants. Any other existing or future Trust that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.