

Variable Account B to reflect the proposed substitution. And, in addition to the prospectus supplements distributed to owners of Policies, within 5 days after the proposed substitutions, all owners who were affected by a substitution will be sent a written notice informing them that the substitutions were carried out. Monarch Life will include in such mailing the supplement to the prospectus of Variable Account B, which describes the substitutions.

19. Monarch Life and certain of its separate accounts (including Variable Account B) (collectively, "Accounts") have previously received no-action assurances from the staff of the Commission that the staff would not recommend that the Commission take any enforcement action against Monarch Life or the Accounts if post-effective amendments to registration statements are not filed under the 1933 Act and the 1970 Act, and updated prospectuses for the Accounts are not distributed to owners of existing variable contracts issued through the Accounts provided that certain conditions are met (Monarch Life Insurance Company, pub. avail. June 9, 1992, the "June 9th No-Action Letter"). The conditions of the June 9th No-Action Letter include providing various documents to the variable Policy owners including, but not limited to, periodic reports, prospectuses, proxy statements and related voting instructions pertaining to the relevant underlying mutual funds. In accordance with the terms of the June 9th No-Action Letter, Monarch Life does not update the Variable Account B prospectus on an annual basis as would otherwise be required by the 1933 Act and the 1940 Act. Therefore, Policy owners do not have the benefit of receiving an updated Variable Account B prospectus which would provide them with certain information concerning the ML fund. In light of this fact, Applicants undertake to provide the Policy owners of Variable Account B with the same disclosure concerning the ML Fund as such owners would receive if Monarch Life updated and mailed its Variable Account B prospectus to owners. Such information includes the fees and expenses of the ML Fund, and a description of the investment objectives of each of the series of the ML Fund.

20. Applicants state that following the substitutions, Policy owners will be afforded the same policy rights, including surrender and other transfer rights with regard to amounts invested under the Policies, as they currently have. (Monarch Life currently imposes no restrictions or fees on the ability of Policy owners to make transfers nor

does it intend to impose any after the proposed substitutions are effected.)

Applicants' Legal Analysis

21. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

22. Applicants maintain that the purposes, terms and conditions of the substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent.

23. Applicants state that the Policies provide to Monarch Life the right, subject to Commission approval, to effect a substitution of the kind Applicants propose. The prospectus for the Policies contains disclosure of this right.

24. Applicants anticipate that, after the proposed substitutions, the substitute series will provide Policy owners with comparable investment results to those achieved now by the Oppenheimer Trust. Applicants submit that the investment objective of each of the substitute series is identical to the investment objective of the removed series that it would replace. Each of the substitute series is substantially larger than the removed series that it would replace. Each of the substitute funds is a suitable and appropriate investment vehicle for Policy owners.

25. Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past in that:

a. The substitution will be at net asset value of the respective units, without

the imposition of any transfer or similar charge;

b. Monarch Life will assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the substitution;

c. The substitution will not alter the insurance benefits to Policy owners or the contractual obligations of Monarch Life;

d. The substitution will not alter tax benefits to Policy owners;

e. Policy owners may choose simply to withdraw amounts credited to them following the substitution under the conditions that currently exist without incurring any charges; and

f. The substitution is expected to confer certain economic benefits to Policy owners by virtue of the enhanced asset size of the substitute series.

Conclusion

Applicants submit, for the reasons summarized above, that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-14403 Filed 5-29-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23205; International Series Rel No. 1137; 812-10810]

Old Mutual South Africa Equity Trust, et al.; Notice of Application

May 26, 1998.

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

ACTION: Notice of 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: Order requested to permit Old Mutual South Africa Equity Trust (the "Trust") to purchase certain securities of DataTec Limited ("DataTec") from Old Mutual Global Assets Fund Limited (the "Global Fund"), an affiliated person of the Trust.

APPLICANTS: The Trust, the Global Fund, and Old Mutual Asset Managers (Bermuda) Limited (the "Adviser").

FILING DATES: The application was filed on October 6, 1997. Applicants have

agreed to file an 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 SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1998, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 61 Front Street, Hamilton, Bermuda, Attention: Melanie Saunders.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

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 (tel. (202) 942-8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a trust under Massachusetts law and registered under the Act. The investment objective of the Trust is long-term total return in excess of that of the Johannesburg Stock Exchange (the "JSE"), Actuaries All Share Index through investment in equity securities of South African issuers. Beneficial interests in the Trust are sold solely in private placement transactions to investment companies, common or commingled trust funds, or similar entities that are "accredited investors" within the meaning of Regulation D under the Securities Act of 1933, as well as to certain investment funds organized outside the United States. Old Mutual Fund Holdings (Bermuda) Limited ("Old Mutual Fund Holdings"), a wholly-owned subsidiary of the South African Mutual Life Assurance Society ("Old Mutual"),

owns approximately 88.24% of the voting securities of the Trust.¹

2. The Global Fund is organized under the laws of Bermuda. Old Mutual Fund Holdings is the sole shareholder of the Global Fund.

3. The Trust and the Global Fund are advised by the Adviser, a wholly-owned subsidiary of Old Mutual. The Adviser is registered under the Investment Advisers Act of 1940.

4. The Adviser's sole place of business is Hamilton, Bermuda. All purchase and sale decisions with respect to securities to be purchased or sold by the Trust are made by Bermuda-based personnel of the Adviser, who do not have any portfolio management responsibilities for any other accounts managed by Old Mutual or any of its affiliates or in which Old Mutual or any of its affiliates has any direct or indirect beneficial interest, other than the Trust, the Global Fund, and certain other accounts holding primarily securities of non-South African issuers. Old Mutual's principal place of business is Cape Town, South Africa.

5. Data Tec is a South African corporation. It is an Internet centric information technology group incorporating the leading Internet service provider in South Africa. DataTec's ordinary shares are listed on the JSE. Applicants state that, for the period beginning January 19, 1998 and ending April 24, 1998, the unweighted average weekly volume of ordinary shares of DataTec traded on the JSE, as a percentage of the total number of ordinary shares of DataTec outstanding and calculated on an annualized basis, was 52.75%.

6. Old Mutual, its wholly-owned subsidiaries and investment vehicles managed by Old Mutual and its wholly-owned subsidiaries, but excluding the Trust and the Global Fund (collectively, the "Old Mutual Group"), own approximately 28.34% of the total outstanding ordinary shares of DataTec.²

7. Applicants state that it is common practice in the South African equity markets for placements to be offered to large institutional investors at a discount to the market price. Applicants also state that the Old Mutual Group is a major participant in the South African equity markets.

8. In June 1997, DataTec privately placed 1,774,318 of its ordinary shares in order to fund the acquisition of Logical Networks Plc, a UK based company ("Logical Networks"). On August 11, 1997, the Global Fund

purchased 1,619,555 of these DataTec shares, representing approximately 2.78% of DataTec's total outstanding ordinary shares, at an average weighted price of SA R24.94 per share, and at a 19.02% discount from the market price.

9. In March, 1998, DataTec privately placed 2,367,984 of its ordinary shares in order to fund the acquisition of Blue Sky (UK) Plc ("Blue Sky") and to complete the funding of Logical Networks. On March 20, 1998, the Global Fund purchased 1,677,894 of these DataTec shares, representing approximately 2.88% of DataTec's total outstanding ordinary shares, at an average weighted price of SA R28.35 per share, and at a 60.07% discount from the market price. The DataTec shares purchased by the Global Fund on August 11, 1997 and March 20, 1998 (the "Settlement Dates") are referred to as the "DataTec Shares."

10. Applicants propose that the Trust purchase the DataTec Shares from the Global Fund. The purchase price to be paid by the Trust will be the price paid by the Global Fund on the respective Settlement Date plus carrying costs (the "Purchase Price"). The carrying costs will reimburse the Global Fund for its estimated cost of funds (the Eurodollar overnight deposit rate plus 0.5%) from the respective Settlement Date through the date on which the Trust purchases the DataTec Shares (the "Trust Purchase Date").

11. Applicants state that the proposed transaction is of substantial value to the Trust. Since October 1997, the price of DataTec ordinary shares has increased by 206% from SA R30.70 per share to SA R94.00 per share on April 24, 1998. If the Trust completed the proposed purchase of the DataTec Shares on April 24, 1998, the Trust would have realized an immediate benefit of SA R220 million (U.S. \$44 million), based on a purchase price that represented a 71% discount from the market value of the DataTec shares on that date.

12. Applicants represent that the DataTec Shares have all the attributes of the DataTec ordinary shares listed on the JSE, and that the DataTec Shares are freely transferable under South African law. Applicants also state that the Trust has not entered into, and will not be subject to, any agreement or understanding, express or implied, that the Trust may not sell the DataTec Shares on the open market at any time after its proposed purchase.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting

¹ Based on holdings as of April 24, 1998.

² Based on holdings as of April 24, 1998.

as principal, knowingly to sell any security to the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include: (a) 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, (b) any person directly or indirectly controlling, controlled by, or under common control with the other person, or (c) if the other person is an investment company, any investment adviser of that person.

2. The Trust and the Global Fund are controlled by Old Mutual and share a common investment adviser. Thus, the Trust and the Global Fund are affiliated persons within the meaning of section 2(a)(3) of the Act, and the sale of the DataTec Shares by the Global Fund to the Trust is prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the requested relief meets the standards set forth in section 17(b). Applicants state that, while the Adviser utilizes analysts employed by Old Mutual, the decision to purchase the DataTec Shares was an independent decision made by the Adviser solely in the interests of the Trust and was not improperly influenced by Old Mutual or its personnel. Applicants further state that the board of trustees of the Trust, including a majority of the trustees who are not interested persons of the Trust (the "Board"), approved the Trust's purchase of the DataTec Shares. In evaluating the terms of the proposed transaction, the Board considered the fact that the Trust Purchase Price will include reimbursement of the carrying costs.

5. Applicants state that the transaction will comply with the requirements of rule 17a-7 under the Act, except that (i) the Trust Purchase Price will be below the current market price, and (ii) the Trust and the Global Fund are affiliated persons by reason other than having a common investment adviser, common directors, and/or officers. Applicants further represent that the Trust will not purchase the DataTec Shares if on the Trust Purchase Date the market price of the DataTec

Shares falls below the Trust Purchase Price. Thus, applicants believe that the terms of the proposed transaction, including the consideration to be paid, are fair and reasonable.

6. Applicants believe that the transaction does not involve overreaching on the part of any person concerned. Applicants state that, although under section 2(a)(9) of the Act, the Old Mutual Group presumptively controls DataTec through ownership of 28.34% of DataTec's voting securities, the Old Mutual Group does not exercise any control over the management or day-to-day operations of DataTec. Applicants state that Old Mutual Group's holdings in DataTec include approximately 6.0% of the total outstanding shares of DataTec held by accounts managed by Old Mutual for external clients, such as pension funds for charitable organizations and publicly traded companies. Old Mutual seeks instructions from these external clients regarding the voting of DataTec shares on non-routine matters, including the election of directors other than the nominees of DataTec management.

7. Applicants represent that the Old Mutual Group holds DataTec shares for investment purposes as a passive investor. None of the officers or directors of DataTec are officers or directors of any entity within the Old Mutual Group; the Old Mutual Group has never sought to elect its nominees to the board of directors of DataTec and has always either abstained from voting or voted for the nominees of DataTec management. Applicants state that, according to independent research reports, the directors of DataTec own approximately 24.70% of DataTec's ordinary shares and are the controlling shareholders of DataTec.

8. Applicants further represent that, other than the ownership of the DataTec ordinary shares, the Old Mutual Group does not have any ownership, investment or lending relationship with DataTec. Finally, applicants represent that the Old Mutual Group has no ownership, investment or lending relationship with Logical Networks or Blue Sky.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-14404 Filed 5-29-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business

Administration by the Final Order of the United States District Court for the Central District of California dated April 21st, 1993, and filed April 23, 1993, the United States Small Business Administration hereby revokes the license of Business Equity & Development Corporation, a California corporation, to function as a small business investment company under Small Business Investment Company License No. 09/12-5151 issued to Business Equity & Development Corporation on March 19, 1970 and said license is hereby declared null and void as of April 23, 1993.

Dated: May 20, 1998.

Small Business Administration.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 98-14328 Filed 5-29-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Middle District of Louisiana dated April 5, 1995, the United States Small Business Administration hereby revokes the license of First Southern Capital Corporation, a Louisiana corporation, to function as a small business investment company under Small Business Investment Company License No. 01/12-0023 issued to First Southern Capital Corporation on May 11, 1961 and said license is hereby declared null and void as of April 5, 1995.

Dated: May 20, 1998.

Small Business Administration.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 98-14329 Filed 5-29-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of New York dated July 22, 1993, the United States Small Business Administration hereby revokes the license of ODA Capital Corporation, a New York corporation, to function as