

Agreements are approved or disapproved by the shareholders of the Funds, but in no event longer than 120 days from the Order Date; and (ii) Cornerstone to receive, upon approval of the Interim Agreements by the Funds' shareholders, any and all fees earned under the Interim Agreements during the Interim Period. Applicants state that the Interim Agreements will be the same as the FPA Agreements that had been approved by the Funds' shareholders, except with respect to the parties, the effective and termination dates, and the inclusion of escrow arrangements described below.

5. Fees earned under the Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank acting as escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) to Cornerstone, only upon approval of the Interim Agreements by the shareholders of the relevant Fund; or (ii) to the relevant Fund, in the absence of approval by its shareholders. Before amounts are released from the escrow account, the Boards will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the registered investment company. Applicants state that, as a result of the timing of Cornerstone's selection as the new investment adviser, the Funds were unable to solicit shareholder approval of the Interim Agreements.

2. Rule 15a-4 under the Act provides, in pertinent part, that if an investment advisor contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approved by that company's board of directors (including a majority of non-interested directors); and (i) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved the company's shareholders. Applicants state that they already have relied on rule 15a-4 for a 120 day period and therefore require a Commission order for the Interim Period.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision 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. Applicants states that the requested relief meets this standard.

4. Applicants represent that the Interim Agreements will have the same terms and conditions as the FPA Agreements, except for the parties, dates of commencement and termination and the inclusion of escrow arrangements. Applicants also assert that each Fund will receive, during the Interim Period, the same investment advisory services, provided in substantially the same manner and at the same fee levels, and by personnel having substantially equivalent Qualifications, as it received under the FPA Agreements. Applicants state that, in the event there is any material change in the personnel providing material services, Cornerstone will apprise and consult the Boards to assure that the Boards are satisfied that the services provided by Cornerstone will not be diminished in scope or quality.

5. Applicants also state that the Boards diligently discharged their responsibilities by closely examining and reviewing numerous possibilities for management of the Funds during the period that the Funds relied on rule 15a-4. In light of various business considerations, operational issues, and due diligence issues, the selection of a new interim investment adviser was time-consuming. Applicants state, however, that the Boards conducted this search in a timely and efficient manner.

6. Applicants contend that to deprive Cornerstone of its fees for the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to Cornerstone under the Interim Agreements will not be released to Cornerstone by the escrow agent without the approval of the Funds' shareholders.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Interim Agreements will have substantially identical terms and conditions as the FPA Agreements except for the parties, dates of commencement and termination and escrow provisions.

2. Fees earned by Cornerstone in respect of the Interim Agreements during the Interim Period will be paid

into an interest-bearing escrow account with an unaffiliated escrow agent, and amounts in the account (including interest earned on such paid fees) will be paid (a) to Cornerstone only upon approval of the related Fund shareholder, or (b) to the Funds, in the absence of such approval by the shareholders of the Funds.

3. Each Fund will hold a meeting of shareholders to vote on approval of the Interim Agreements on or before the 120th day following the Order Date.

4. Cornerstone will pay the cost of soliciting shareholder approval of the Interim Agreements.

5. Cornerstone will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the Boards, to the scope and quality of services that were provided under the FPA Agreements. If personnel providing material services during the Interim Period change materially, Cornerstone will apprise and consult the Boards to assure that the Boards are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-30406 Filed 11-2-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23528; 812-11204]

Nike Securities L.P., et al.; Notice of Application

November 6, 1998.

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

ACTION: Notice of application under section 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would supersede a prior order and permit a terminating series of a unit investment trust ("UIT") to sell portfolio securities to a new series of the UIT.

APPLICANTS: Nike Securities L.P. (the "Sponsor"), First Trust Special Situations Trust (the "Trust"), any future UIT sponsored by the Sponsor (together with the Trust, the "Trusts")

and certain series of the Trusts (each, a "Series" or "Trust Series").¹

FILING DATES: The application was filed on June 29, 1998. Applicants have agreed to file an amendment to the application, the substance of which is incorporated in this notice, during the notice period.

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. December 1, 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, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942-0553, or Christine Y. Greenlees, 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 SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549 (tel. (202) 942-8090).

Applicants' Representations

1. Each Trust Series will be a series of one of the Trusts, each a UIT registered under the Act.² The Sponsor will be the sponsor of the Trusts. Each Trust Series will be created under the laws of one of the United States pursuant to a trust agreement, which will contain information specific to that Trust Series, and which will incorporate by reference a master trust indenture between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and

that satisfies the criteria in section 26(a) of the Act (the "Trustee").

2. Each Trust Series will hold a portfolio of equity securities of domestic and/or foreign companies. The Trust Series generally are designed so seek above-average total return through capital appreciation, dividend income, or both.

3. Applicants anticipate that many, if not all, of the securities in each Trust Series will be actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares and equal in value to at least U.S. \$25,000) on (a) an exchange (an "Exchange") which is either a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934, or a foreign securities exchange (a "Foreign Exchange") which meets the qualifications set forth in the proposed amendments to rule 12d3-1(d)(6) under the Act³ and that releases daily closing prices, or (b) the Nasdaq-National Market System ("Nasdaq-NMS") (the securities meeting these requirements are referred to in this notice as "Equity Securities").

4. Each Trust Series will terminate on a date after a specified period, generally one or two years. The Sponsor intends that, as each Trust Series terminates, a new Trust Series ("New Trust Series") having the same or a similar investment objective or investment strategy, will be offered for the next period.

5. Each Trust Series has or will have a contemplated date (the "Rollover Date") on which holders of units in that Trust Series (the "Rollover Trust Series") may at their option redeem their units in the Rollover Trust Series and receive in return units of the New Trust Series, which will be created on or about the Rollover Date.

6. Applicants anticipate that there will be some overlap in the Equity Securities selected for the portfolios of each Rollover Trust Series and the related New Trust Series. In connection with its termination, absent the requested relief, each Rollover Trust Series would sell all of its Equity

Securities on the applicable Exchange or Nasdaq-NMS. Likewise, a New Trust Series would acquire its Equity Securities on the applicable Exchange or on Nasdaq-NMS. This procedure would result in the unitholders of both the Rollover Trust Series and the New Trust Series incurring brokerage commissions on the same Equity Securities.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by or under common control with, such other person. Each Trust Series will have a common sponsor. Since the sponsor of a Trust Series may be deemed to control the Trust Series, all of the Trust Services may be deemed to be under common control and, thus, affiliated persons of each other.

2. Rule 17a-7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a-7, other than paragraph (e).

3. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a UIT does not have a board of directors, the Trust Series would be unable to comply with this requirement.

4. Section 17(b) of the Act provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment companies involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Section 6(c) of the Act provides that the SEC may exempt classes of transactions if the 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. Applicants request relief under section 6(c) and 17(b) to permit a

¹ Any future Trust that relies on the relief will comply with the terms and conditions of the application.

² The requested order would supersede a prior order. Investment Company Act Release Nos. 20946 (Mar. 8, 1995) (notice) and 20985 (Apr. 4, 1995) (order).

³ Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3-1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where: (1) trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of registered investment companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. \$7.5 billion; and (4) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

Rollover Trust Series to sell Equity Securities to a New Trust Series and to permit the New Trust Series to purchase the Equity Securities.

5. Applicants state that the terms of the proposed transactions meet the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales between Trust Series will be consistent with the policy of each Trust Series. Applicants further state that permitting the proposed transactions would result in savings on brokerage fees for the Trust Series.

6. Applicants state that the condition that the Equity Securities must be actively traded on an Exchange or the Nasdaq-NMS protects against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Equity Securities from a Rollover Trust Series to a New Trust Series: (a) that the transaction is consistent with the policy of both the Rollover Trust Series and the New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the closing sales price on the Exchange or on the Nasdaq-NMS for the sale date of the Equity Securities. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of the disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of units of the New Trust Series, and distributions to holders of the Rollover Trust Series with regard to redemption of their units or termination of the Rollover Trust Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing prices for the date of the transaction.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each sale of Equity Securities by a Rollover Trust Series to a New Trust Series will be effected at the closing price of the Equity Securities sold on the applicable Exchange or the Nasdaq-

NMS on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of the transactions will be fully disclosed to investors in the prospectus of each Rollover trust Series and New Trust Series.

3. The Trustee of each Rollover Trust Series and New Trust Series will (a) review the procedures discussed in the application relating to the sale of Equity Securities from a Rollover Trust Series and the purchase of those securities for deposit in a New Trust Series, and (b) make any changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a-7.

4. A written copy of these procedures and a written record of each transaction pursuant to the order will be maintained as provided in rule 17a-7(f).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-30404 Filed 11-12-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23526; 812-11292]

Simms Funds, et al.; Notice of Application

November 6, 1998.

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

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

SUMMARY OF APPLICATION: The requested order would permit certain limited partnerships to transfer their assets and liabilities to corresponding series of a new registered open-end management investment company in exchange for the series' shares.

APPLICANTS: Simms Funds ("Trust"), Simms Capital Management, Inc. ("Simms Capital"), Simms Partners (U.S.) L.P. ("U.S. Partnership"), Simms Partners (International) L.P. ("International Partnership") (collectively, the "Partnerships"), Robert A. Simms ("Simms"), and Thomas L. Melly ("Melly").

FILING DATES: The application was filed on September 3, 1998 and amended on October 26, 1998. Applicants will amend the application during the notice

period, the substance of which as been included 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 request should be received by the SEC by 5:30 p.m. on November 27, 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, N.W., Washington, D.C. 20549; Applicants, 55 Railroad Avenue, Greenwich, CT, 06830.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Adviser, at (202) 942-0574, or Edward P. Macdonald, Branch Chief, 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, N.W., Washington, D.C. 20549 (tel. no. 202-942-8090).

Applicant's Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust initially will offer three portfolios, two of which ("Funds") will correspond to the partnerships in terms of investment objectives and policies. The two Funds are the U.S. Equity Fund and the International Equity Fund.

2. The Partnerships were organized as Delaware limited partnerships on July 1, 1996, and are not registered under the Act in reliance on section 3(c)(1) of the Act.

3. Simms Capital serves as the managing general partner of the Partnerships. Simms Capital is registered under the Investment Advisers Act of 1940 ("Advisers Act").

4. Simms is President and Chief Executive Officer of Simms Capital. Simms also serves as a trustee of the Trust and is a general partner of each Partnership. Melly, a principal of Simms Capital and a limited partner of each Partnership, also serves as a trustee