

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.

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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

of the Trust. As of September 30, 1998, Simms' interests in the U.S. Partnership and International Partnership were 9.9% and 10.9%, respectively. Melly's interests in the U.S. Partnership and International Partnership were 14.83% and 35.24%, respectively.

5. Applicants propose that, pursuant to an Agreement and Plan of Reorganization ("Plan"), each Partnership would transfer to the corresponding Fund all of its assets and liabilities, in exchange for shares of the Fund, and distribute the Fund shares received to the partners of the Partnership in liquidation of the Partnership ("Reorganization"). Following each Reorganization, the partners of each Partnership will constitute all of the holders of the corresponding Fund (except for shares representing seed capital). Fund shares delivered to the Partnerships will have an aggregate net asset value ("NAV") equal to the NAV of the assets transferred by the Partnerships to the Funds. Each Reorganization is expected to close on or about December 1, 1998. The expenses of each Reorganization will be borne by Simms Capital.

6. On September 14, 1998, the board of trustees of the Trust ("Board"), including a majority of the disinterested trustees, approved the Reorganizations as in the best interest of the Funds and their shareholders. The Board concluded that: (a) the Reorganizations are desirable as a business matter from the point of view of the Trust; (b) the terms of each Reorganization are reasonable and fair, do not involve overreaching on the part of any person concerned, and are consistent with the policies of the Funds; and (c) the interests of the existing shareholders of the Funds will not be diluted as a result of the Reorganizations. Among other things, the Board considered the possibility of adverse tax consequences to future shareholders of the Funds resulting from the carrying forward of unrealized capital gains from the Partnerships to the Funds. These findings, and the basis upon which the findings were made, have been fully recorded in the minute book of the Trust.

7. Simms Capital has determined that it would be in the best interests of each Partnership to enter into the Reorganizations. Accordingly, Simms Capital will execute the Plan on behalf of each Partnership and will notify each limited partner of its actions. Simms Capital also will provide each limited partner with a copy of the corresponding Fund's prospectus or preliminary prospectus, and will allow ample time for any limited partner who

does not want to become a shareholder of the corresponding Fund to liquidate their partnership interest prior to the Reorganization.

8. Each Reorganization will not be effected until: (a) the Trust's registration statement on Form N-1A is effective; (b) the SEC has issued the requested order; and (c) the Trust and the Partnerships have received an opinion of counsel that no gain or loss will be recognized by the Funds upon the transfer of the Partnerships' assets and the Funds' assumption of the Partnerships' liabilities.

Applicants' Legal Analysis

1. Section 17(a) 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 or purchasing from 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 controlling, controlled by, or under common control with, the other person; any officer, director, partner, copartner or employee of the other person; or, if the other person is an investment company, its investment adviser. Under section 2(a)(9) of the Act a person who owns 25% or more of the outstanding voting securities of a company is presumed to control such a company.

2. Applicants state that each partnership, Simms Capital (as managing general partner of the Partnerships), Simms (as general partner of the Partnerships), and Melly are affiliated persons of the Trust or affiliated persons of an affiliated person of the Trust because: (a) the Partnerships and the Trust may be deemed to be under the control of Simms Capital and Simms; and (b) Melly, a trustee of the Trust, may be deemed to control the International Partnership because he owns more than 25% of that partnership. Thus, applicants state that the proposed Reorganizations may be deemed to 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) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of a security. Applicants state that the relief provided by rule 17a-7 may not be available for the Reorganization because the

Reorganization will be effected on a basis other than cash. Applicants also state that Simms and Melly, trustees of the Trust, are deemed to be affiliated persons of the partnerships because they own, control, or hold with power to vote, individually, 5% or more of each partnership. As a result, applicants state that the Funds and the partnerships are affiliated in a manner other than that stated in rule 17a-7.

4. Section 17(b) of the Act authorizes the SEC to exempt any person from the provisions of section 17(a) 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.

5. Applicants state that each Reorganization satisfies the requirements of section 17(b). Applicants state that because Fund shares will be issued to the Partnerships and their partners at NAV their interests will not be diluted. Applicants also state that the investment objectives and policies of each Fund are substantially similar to its corresponding Partnership and after the Reorganization partners of the Partnerships will hold substantially the same assets as Fund shareholders as they held as partners. Applicants also state that the Trust's Board, including a majority of the disinterested trustees, has approved the Reorganizations, and that each Reorganization will comply with rule 17a-7(b) through (f).

Applicants' Conditions

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

1. The Reorganizations will comply with the terms of rule 17a-7(b) through (f).

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-30405 Filed 11-12-98; 8:45 am]

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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 Southern District of New York, dated