

# SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23426, 812-11260]

## The Evergreen International Trust, et al.; Notice of Application

September 2, 1998.

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

**ACTION:** Notice of application for an order 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:** Applicants, Evergreen International Trust (the "Trust") and First Union National Bank ("FUNB"), request an order to permit a series of the Trust to acquire all of the assets and certain stated liabilities of another series of the Trust. Because of certain affiliations, Applications may not rely on rule 17a-8 under the Act.

**FILING DATES:** The application was filed on August 11, 1998. 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 September 25, 1998, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Robert N. Hickey, Esq., Sullivan & Worcester LLP, 1025 Connecticut Avenue, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** John K. Forst, Attorney Advisor, at (202) 942-0569, or Edward P. Macdonald, 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, NW., Washington, DC 20549 (tel. 202-942-8090).

## Applicants' Representations

1. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Evergreen International Equity Fund (the "Selling Fund") and the Evergreen International Growth Fund (the "Acquiring Fund"), are each series of the Trust. FUNB, a subsidiary of First Union Corporation ("First Union"), is a national banking association. The Capital Management Group, a division of FUNB, is the investment adviser to the Selling Fund. FUNB is not required to register under the Investment Advisers Act of 1940 ("Advisers Act"). Keystone Investment Management Company ("Keystone"), an indirect, wholly owned subsidiary of FUNB, is the investment adviser to the Acquiring Fund. Keystone is registered under the Advisers Act. FUNB, as a fiduciary for its customers, owns of record more than 25% of the outstanding voting securities of each Fund.

2. On June 26, 1998, the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons" under section 2(a)(19) of the Act (the "Independent Trustees"), approved a plan of reorganization (the "Plan") under which the Acquiring Fund will acquire the assets, and assume certain stated liabilities, of the Selling Fund in exchange for shares of the Acquiring Fund (the "Reorganization"). As a result of the Reorganization, each Selling Fund shareholder will receive Acquiring Fund shares having an aggregate net asset value equal to the aggregate net asset value of the corresponding Selling Fund's shares held by that shareholder calculated as of the close of business immediately prior to the date on which the Reorganization will occur. Applicants expect that the Reorganization will occur on or about October 26, 1998 (the "Closing Date").

3. Each Fund offers four classes of shares: Classes A, B, C, and Y shares. Holders of shares of each class of the Selling Fund will receive shares of the corresponding class of the Acquiring Fund. Class A shares are subject to a front-end sales charge and an asset-based distribution fee. Class B and Class C shares are subject to a contingent deferred sales charge and an asset-based distribution fee. Class Y shares are not subject to any front-end sales charge or asset-based distribution or service fee. No initial sales charge will be imposed in connection with Class A shares of the Acquiring Fund received by the Selling

Fund shareholders and no contingent deferred sales charge will be imposed with respect to receipt of Class B or C shares.

4. The investment objectives of the Selling Fund and Acquiring Fund (collectively, the "Funds") are substantially similar. The investment restrictions and limitations of the Funds also are substantially similar.

5. The Board, including a majority of Independent Trustees, approved the Reorganization as in the best interests of shareholders and determined that the interests for existing shareholders will not be diluted as a result of the Reorganization. The Board considered, among other things, (a) the terms and conditions of the Reorganization; (b) whether the Reorganization would result in the dilution of shareholders' interests; (c) expense ratios, fees and expenses of the Funds; (d) the comparative performance records of the Funds; (e) compatibility of the Funds' investment objectives and policies; (f) the investment experience, expertise and resources of Keystone; (g) the service and distribution resources available to the Acquiring Fund and the broad array of investment alternatives to shareholders of the respective Funds; (h) the personnel and financial resources of First Union and its affiliates; (i) the fact that FUNB will bear the expenses incurred by the Selling Fund in connection with the Reorganization; (j) the fact that the Acquiring Fund will assume the identified liabilities of the Selling Fund; and (k) the expected federal income tax consequences of the Reorganization. FUNB will pay the expenses of the Reorganization older than the Acquiring Fund's federal and state registration fees.

6. The Plan may be terminated by the Selling or Acquiring Fund at or prior to the Closing Date if the other party breaches any provision of the Plan that was to be performed and the breach is not cured within 30 days or a condition precedent to the terminating party's obligations has not been met and it appears that the condition precedent will not or cannot be met.

7. A registration statement on Form N-14 containing the preliminary combined prospectus/proxy statement for the Reorganization, was filed with the SEC on August 4, 1998. A final prospectus/proxy will be mailed to shareholders of the Selling Fund on or about September 3, 1998. A special meeting of the Selling Fund's shareholders will be held on or about October 16, 1998, to approve the Reorganization.

8. The consummation of the Reorganization under the Plan is subject to a number of conditions precedent, including: (a) the Plan has been approved by the Board and the Selling Fund's shareholders in the manner required by applicable law; (b) management of the Selling Fund solicits proxies from its shareholders seeking approval of the Reorganization; (c) the Funds have received opinions of counsel stating, among other things, that the Reorganization will not result in federal income taxes for the Funds or their shareholders; and (d) Funds have received from the SEC an order exempting the Reorganization from the provisions of section 17(a) of the Act. Applicants agree not to make any material changes to the Plan that affect the application without prior SEC approval.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, knowingly from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines the term "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 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (d) if the other person is an investment company, any investment adviser of the person.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants believe that they cannot rely on rule 17a-8 under the Act because the Funds may be affiliated for reasons other than those set forth in the rule. The Funds may be affiliated persons of each other because FUNB, as fiduciary for its customers, owns of record 25% or more of the outstanding securities of each Fund.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence

establishes that (a) 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 the person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the provisions of section 17(b) of the Act. Applicants state that the Board has determined that the transaction is in the best interests of the Funds' shareholders and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, Applicants state that the exchange of the Selling Fund's shares for shares of the Acquiring Fund will be based on the relative net asset values.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-24205 Filed 9-9-98; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23424; File No. 812-11200]

#### Integrity Life Insurance Company, et al.; Notice of Application

September 2, 1998.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act").

**SUMMARY OF APPLICATION:** The Applicants seek an order pursuant to Section 6(c) of the 1940 Act exempting the Applicants, and other separate accounts of the Companies or affiliated insurance companies that support materially similar investment divisions, from the provisions of Section 12(d)(3) of the 1940 Act, to the extent necessary to permit the divisions of Separate Account Ten and the Select Ten Plus Division to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

**APPLICANTS:** Integrity Life Insurance Company ("Integrity"), Separate Account Ten of Integrity Life Insurance Company ("Separate Account Ten"), National Integrity Life Insurance Company ("National Integrity," together with Integrity, the "Companies"), and Select Ten Plus Division of Separate Account II of National Integrity Life Insurance Company (Select Ten Plus Division") (collectively, the "Applicants").

**FILING DATE:** The application was filed on June 26, 1998.

**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 Secretary of the SEC and servicing Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 28, 1998, 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 requester'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 Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20459. Applicants, c/o ARM Financial Group, Inc., 515 West Market Street, Louisville, Kentucky 40202-3319.

**FOR FURTHER INFORMATION CONTACT:** Megan L. Dunphy, Attorney, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

#### Applicants' Representations

1. Integrity is a stock life insurance company and is authorized to sell life insurance and annuities. Integrity is an indirect, wholly-owned subsidiary of ARM Financial Group, Inc., ("ARM").

2. Separate Account Ten is a separate account of Integrity and is a funding vehicle for variable annuity contracts. The account is registered with the SEC as an open-end management investment company and is divided into four non-diversified investment divisions, Select Ten Plus Division—March, Select Ten Plus Division—June, Select Ten Plus Division—September, and Select Ten