

Customer will have no obligation to purchase either BIOTEN Unit if the first unit does not satisfy agreed upon performance criteria.

EEIC and EUAB also request authority for EUABP to finance, construct, install and sell BIOTEN Units to other customers, both inside and outside the United States, and to provide related services and products for First Customer and other purchasers of BIOTEN Units. These services include engineering, procurement and construction services, sales, installation and long term operation and maintenance services, equipment and training support, and promotion and marketing services in connection with the BIOTEN Units. These products would consist of components to be used for the BIOTEN Units and may be manufactured locally, subject to appropriate licensing arrangements with respect to the BIOTEN Technology. EUABP may pursue these activities either by itself or through the establishment of one or more special purpose subsidiaries or joint ventures with local nonassociates ("Special Purpose Entities"). EEIC and EUAB assert that none of the proposed activities with respect to First Customer or other customers ("Proposed Activities") would constitute the ownership or operation of an electric utility company within the meaning of section 2(a)(3) of the Act.

In addition, EEIC and EUAB request authority to increase and extend their authority to invest in EUABP and/or the Special Purpose Entities. Specifically, EEIC and EUAB request authority, through December 31, 2002 to increase the working capital line of credit from \$6 million to \$13 million and to make capital contributions not to exceed \$8.907 million outstanding at any one time. EEIC and EUAB also request authority for EUABP to invest up to these amounts in the Special Purpose Entities. As a result of these investments, EUAB's voting interest in EUABP would increase from 9.9% to approximately 80% and EUABP would become a subsidiary of EUAB. Investments in the Proposed Activities would be limited to these amounts.

Also, EEIC and EUAB request authority for EUABP to render services in connection with the Proposed Activities to those Special Purpose Entities which are subsidiaries of EUABP under an exemption from the cost standard of section 13(b) of the Act.

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

Maragret H. McFarland,

Deputy Secretary.

[FR Doc. 98-2885 Filed 2-4-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23014; 812-10908]

The Sessions Group, et al.; Notice of Application

January 30, 1997.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Summary of Application: Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to permit common trust funds sponsored by Financial Trust Services, Inc. ("Trust Company") to transfer substantially all of their assets to series of The Sessions Group ("Sessions"), in exchange for shares of the series.

Applicants: Sessions, Keystone Financial, Inc. ("Keystone"), Martindale Andres & Company, Inc. ("Adviser"), Trust Company, Collective Investment Fund A ("Fund A"), and Common Stock Fund ("Stock Fund") (Fund A and Stock Fund are collectively "Common Trust Funds").

Filing Date: The application was filed on December 23, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is 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 requests should be received by the SEC by 5:30 p.m. on February 24, 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, N.W., Washington, D.C. 20549. Applicants, c/o Michael P. Malloy, Drinker Biddle & Reath LLP,

Philadelphia National Bank Building, 1345 Chestnut Street, Philadelphia, PA 19107-3496.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942-0569, or Mary Kay Frech, 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, D.C. 20549 (tel. 202-942-8090).

Applicants' Representations

1. Sessions is a business trust organized under Ohio law and registered under the Act as an open-end management investment company. Sessions currently offers its shares to the public in several series with different investment objectives and policies. Adviser is an investment adviser registered under the Investment Advisers Act of 1940 and a wholly-owned subsidiary of Keystone, a bank holding company.

2. Keystone maintains a defined benefit pension plan ("Parent Company Plan") for the benefit of employees of Keystone and its subsidiaries. The Parent Company Plan owns more than 5% of the outstanding voting shares of the KeyPremier Established Growth Fund ("Growth Fund") and KeyPremier Intermediate Term Income Fund ("Income Fund"), each a series of Sessions (the "Mutual Funds"). Adviser acts as investment adviser to the Mutual Funds.

3. The Common Trust Funds are common trust funds as defined in Section 584(a) of the Internal Revenue Code of 1986, as amended. The Common Trust Funds are maintained by Trust Company exclusively for the collective investment and reinvestment of moneys contributed by Trust Company in its capacity as a trustee, executor, administrator, or guardian. The persons and entities for which Trust Company acts in such capacity are referred to as "Participants" in the Common Trust Funds. The Common Trust Funds are excluded from the definition of investment company under section 3(c)(3) of the Act.

4. Applicants propose to transfer the assets held by Fund A to the Growth Fund and the Income Fund in exchange for shares of the Growth Fund and the Income Fund. Applicants also propose to transfer the assets held by Stock Fund to the Growth Fund in exchange for shares of the Growth Fund. Shares of

the Mutual Funds to be issued in the transactions would not be subject to a front-end or deferred sales charge, a redemption fee, any asset-based distribution fee, or any shareholder servicing fee. Common Trust Fund assets to be transferred to the Mutual Funds will be valued in accordance with the provisions of rule 17a-7(b) under the Act, and the Mutual Funds' shares issued will have an aggregate net asset value equal to the value of the Common Trust Funds' assets transferred. Following the proposed transactions, the Common Trust Funds will be terminated, and the Mutual Fund shares issued will be held by Trust Company directly as trustee, executor, administrator, or guardian. The Mutual Fund shares held by Trust Company, as fiduciary, will be credited to the benefit of each Participant, *pro rata*, according to each Participant's interest in the particular Common Trust Fund immediately prior to the transactions.

5. Applicants state that the proposed transactions will be carried out in accordance with procedures previously adopted by Sessions' board of trustees pursuant to rule 17a-7(e) of the Act, and the provisions of rule 17a-7(c), (d), and (f) will be satisfied with respect to Sessions. Applicants assert that the investment objectives and policies of Growth Fund and Income Fund, and the securities they hold, are generally similar to those of the Stock Fund and Fund A, respectively. In addition, Sessions' board of trustees, including a majority of the trustees who are not interested persons, will determine, prior to the consummation of the transactions, that participation by the Mutual Funds in the proposed transactions is in the best interests of the Mutual Funds and that the interests of existing Mutual Fund shareholders will not be diluted as a result of the transactions. These findings, and the basis upon which they were made, will be fully recorded in the minute books of Sessions.

6. Trust Company, as the Common Trust Funds' trustee, will have determined in accordance with its fiduciary duties that the proposed transactions are in the best interests of Participants in the Common Trust Funds. In making this determination, Trust Company will take into account the anticipated benefits which are expected to flow to Participants, including increased liquidity, the availability of daily pricing, the accessibility of performance and other information concerning the Mutual Funds, the similarity of Common Trust Funds' and the Mutual Funds'

investment objectives and policies, the anticipated tax treatment of the proposed transactions, and the aggregate fee levels experienced and expected to be experienced by Participants before and after the proposed transactions.

7. In some instances, Trust Company will be required to obtain the consent or direction of the party having investment authority regarding a Participant's inclusion in the transactions. In the remaining instances, Trust Company, acting alone in its fiduciary capacity, is authorized by such instruments and applicable law to approve and cause the Participant to be included in the proposed transactions. In all instances, information concerning the proposed transactions, the Mutual Funds, applicable fee schedules, and other related information will be provided to Participants before the proposed transactions take place.

8. Applicants also request relief for any future transactions in which common or collective trust funds for which Trust Company, or another entity controlling, controlled by, or under common control with it or Keystone, acts as trustee, transfer assets to registered open-end investment companies (or series thereof) advised by Trust Company, or by another entity controlling, controlled by, or under common control with it or Keystone, which investment companies (or series) are 5% or more owned by a defined benefit pension plan or other employee benefit plan sponsored by Trust Company or another entity controlling, controlled by, or under common control with it or Keystone (the "Future Transactions"). Applicants state that they will rely on the requested relief with respect to Future Transactions only in accordance with the terms and conditions contained in the application.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such registered company any security or other property. 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 such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Because the Common Trust Funds might be viewed as acting as principals in the proposed transactions, and because the Common Trust Funds and the Mutual Funds might be viewed as being under common control of Keystone within the meaning of section 2(a)(3)(C) of the Act, the proposed transactions may be subject to the prohibitions of section 17(a). Accordingly, applicants request an order from the SEC pursuant to sections 6(c) and 17(b) exempting them from section 17(a) of the Act, on the terms and subject to the conditions set forth in the application.

3. Section 17(b) provides that the SEC shall exempt a transaction from section 17(a) 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; (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. Rule 17a-7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are effected at an independent "current market price" and the investment company's board of directors reviews the transactions for fairness. Rule 17a-8 exempts certain mergers and consolidations from section 17(a) if, among other requirements, the investment company's board of directors determines that the transactions are fair.

4. Applicants agree to comply with rules 17a-7 and 17a-8 to the extent possible stated in the conditions to the requested order. The proposed transactions will take place as in-kind transfers from the Common Trust Funds to the Mutual Funds, rather than cash transactions. Applicants assert that if the proposed transactions were effected in cash, the Common Trust Funds and the Participants would have to bear unnecessary expense and inconvenience in transferring assets to the Mutual Funds.

5. Section 6(c) of the Act provides that the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder 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.

6. Applicants submit that the proposed transactions satisfy the standards for relief under sections 6(c)

and 17(b). Applicants assert that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any Applicant; the investment objectives, policies, and restrictions of the Common Trust Funds are compatible with and substantially similar to the applicable Mutual Funds' investment objectives, policies, and restrictions; and the proposed transactions and the requested exemption are in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants' Conditions

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

2. The proposed transactions will not occur unless and until the board of trustees of the Mutual Funds (including a majority of the board's disinterested members) find that participation by the Mutual Funds in the proposed transactions is in the best interests of such funds and that the interests of existing shareholders of such funds will not be diluted as a result of the transactions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Mutual Funds.

3. The proposed transactions will not occur unless and until Trust Company or any entity controlling, controlled by, or under common control with it or Keystone, as trustee, has determined in accordance with its fiduciary duties as trustee for the Common Trust Funds and fiduciary for the Participants, that the proposed transactions are in the best interests of the Participants in the Common Trust Funds.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-2883 Filed 2-4-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23013; 812-10902]

The Virtus Funds, et al.; Notice of Application

January 30, 1998.

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

ACTION: Notice of application for exemption under section 17(b) of the

Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the reorganization and consolidation of series of certain registered open-end investment companies into certain series of another registered open-end investment company.

APPLICANTS: Evergreen Municipal Trust, Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen International Trust, Evergreen Money Market Trust (together, "Evergreen Funds" or "Acquiring Funds"), The Virtus Funds ("Virtus Funds"), and First Union National Bank (the "Bank").

FILING DATES: The application was filed on December 19, 1997, and amended on January 27, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is 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 requests should be received by the SEC by 5:30 p.m. on February 24, 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, N.W., Washington, D.C. 20549. Applicants: Bank, 201 S. College Street, Charlotte, North Carolina 28288; Virtus Funds, Federated Investors Tower, Pittsburgh, Pennsylvania 15222-3779; and Evergreen Funds, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942-0533, or Mary Kay Frech, 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, D.C. 20549 (tel. 202-942-8090).

Applicant's Representations

1. The Virtus Funds, a Massachusetts business trust consisting of eight series is an open-end management investment company registered under the Act. Virtus Capital Management, Inc. ("Virtus") is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser for the Virtus Funds.

2. The Evergreen Funds are Delaware business trusts and each is an open-end management investment company registered under the Act. The Bank is a North Carolina corporation and a banking subsidiary of First Union Corporation, a publicly held bank holding company. The Capital Management Group, a division of the Bank, and two of its subsidiaries, Evergreen Asset Management Corp. and Keystone Investment Management Company, are the investment advisers to the Evergreen Funds. Evergreen Asset Management Corp. and Keystone Investment Management Company are each registered as investment advisers under the Advisers Act.

3. The Bank, as a fiduciary for its customers, controls, or holds with power to vote, 5% or more of the outstanding voting securities of the Virtus Funds. In addition, the Bank, as a fiduciary for its customers, owns of record or controls, or holds with power to vote, 5% or more of the outstanding voting securities of the Evergreen Funds.

4. On September 16 and 17, 1997, the board of each Evergreen Fund and Virtus Fund (together, the "Funds") ("Board"), including a majority of the disinterested directors/trustees, authorized plans of reorganization pursuant to which a series of the Evergreen Funds will acquire a corresponding series of the Virtus Funds with similar investment objectives ("Plans").

Pursuant to the terms of the Plans, the Virtus Funds have agreed to sell all of their assets and certain stated liabilities to a corresponding series of the Acquiring Funds in exchange for shares of the Acquiring Fund ("Reorganization"). The number of Acquiring Fund shares to be issued in exchange for each Virtus Fund share of each class will be determined by dividing the net asset value of one Acquiring Fund share of the appropriate corresponding class by the net asset value of one Virtus Fund share of such class.

5. Holders of Investment Shares of the Virtus Funds will receive Class A shares of the corresponding Evergreen Fund and holders of Trust Shares will receive