

majority of whom are not "interested persons" of the company, formulate and approve any such plan in accordance with Rule 12b-1.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested to permit the daily deduction from the assets of the Separate Accounts of the charge for assumption of mortality and expense risks, including an enhanced death benefit, at a maximum annual rate of 1.40% of net assets, are necessary and appropriate in the public interest and 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. 95-6354 Filed 3-14-95; 8:45 am]

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[Release No. IC-20946; 812-9318]

The First Trust Special Situations Trust, et al.; Notice of Application

March 8, 1995.

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

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

APPLICANTS: The First Trust Special Situations Trust, Target Equity Trust, Value Ten Series 1 and subsequent series, and Nike Securities L.P. ("Nike").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATE: The application was filed on November 3, 1994, and was amended on March 3, 1995.

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 April 3, 1995 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 request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Nike Securities L.P., 1001 Warrenville Road, Suite 3000, Lisle, Illinois 60532.

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.

Applicants' Representations

1. The First Trust Special Situations Trust (the "Trust"), a unit investment trust registered under the Act, consists of a number of series ("Series"), each of which will be similar but separate and designated by a different series number. Target Equity Trust, Value Ten Series 1 is one of the Series of the Trust. Nike is the sponsor for each Series (the "Sponsor"). Applicants request that the relief sought herein apply to any future Series that has the characteristics described below and in the application.

2. Each Series will have a portfolio which contains equity securities ("Equity Securities") which are (i) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (an "Exchange") which is either (a) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (b) a foreign securities exchange that meets the qualifications set out in the proposed amendment to rule 12d3-1(d)(6) under the Act, as proposed by the Commission,¹ and that releases daily closing prices, and (ii) included in a published index (an "Index").

3. The investment objective of each Series is to seek a greater total return than the stocks comprising an entire related Index (*e.g.*, the Dow Jones Industrial Average ("DJIA"), the Hang Seng Index, or the Financial Times Industrial Ordinary Share Index). Certain of the Series will acquire approximately equal values of a designated number of stocks in the DJIA having the highest dividend yields as of a specified date and will hold those stocks for a designated period. Other

Series will create their portfolios in a similar manner using securities that are included in other Indices. The Sponsor of the Series intends that, as each Series terminates, a new Series ("New Series") based on the appropriate Index will be offered for the next period.

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

5. There is normally some overlap from year to year in the stocks having the highest dividend yields in an Index and, therefore, between the portfolios of each Rollover Series and the corresponding New Series. For example, of the ten securities selected for inclusion in Value Ten Series 5 on September 7, 1994, eight were still among the top ten dividend yielding stocks in the DJIA as of the date of the amended application.

6. In connection with its termination, each Rollover Series sells all of its portfolio securities on an Exchange as quickly as practicable, but over a period of time so as to minimize any adverse impact on the market price. Similarly, a New Series acquires its portfolio securities in purchase transactions on an Exchange. This procedure creates brokerage commissions on portfolio securities of the same issue that are borne by the holders of units of both the Rollover Series and the New Series. Applicants, therefore, request an exemptive order to permit any Rollover Series to sell portfolio securities to a New Series and a New Series to purchase those securities.

7. In order to minimize overreaching, the Sponsor will certify to the trustee of the Rollover Series and the New Series, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Exchange for the sale date of the securities subject to such sale. 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 any such 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

¹Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3-1).

correct price by reference to an independently published list of closing sales prices for the date of the transaction, the Sponsor will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover 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 sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Investment companies under common control may be considered affiliates of one another. Each Series will have an identical or common Sponsor, Nike. Since the Sponsor of each Series may be considered to control each Series, it is likely that each Series would be considered an affiliate of the others.

2. Section 17(b) provides that the SEC shall 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 company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Under section 6(c), the SEC may exempt classes of transactions 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 believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a-7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from, or sell securities, one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that

they will comply with all of the provisions of rule 17a-7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of each Series, as only securities that otherwise would be brought and sold on the open market pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees and is therefore contrary to the general purposes of the Act.

Applicants' Conditions

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

1. Each sale of Equity Securities by a Rollover Series to a New Series will be affected at the closing price of the securities sold on the applicable Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

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

3. The trustee of each Rollover Series and New Series will (a) review the procedures discussed in the application relating to the sale of securities from a Rollover Series to a New Series and (b) make such 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 this order will be maintained as provided in rule 17a-7(f).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-6357 Filed 3-14-95; 8:45 am]

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[Release No. IC-20949; 812-9442]

ML Venture Partners II, L.P. et al.; Notice of Application

March 9, 1995.

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

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

APPLICANTS: ML Venture Partners II, L.P. ("MLCP II"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), and Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ").

RELEVANT ACT SECTIONS: Order requested under section 57(c) from section 57(a)(2).

SUMMARY OF APPLICATION: Applicants request an order relating to the sale of shares of common stock of Corporate Express, Inc. by MLVP II in an underwriting in which Merrill Lynch and/or DLJ are members of the underwriting syndicate.

FILING DATE: The application was filed on January 20, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

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 April 3, 1995, 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. MLCP II and Merrill Lynch, North Tower, World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, (202) 942-0570, or Robert A. Robertson, Branch Chief, (202) 942-0560 (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 from the SEC's Public Reference Branch.

Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. MLVP II has five general partners, consisting of four individuals (the "MLVP II Individual General Partners") and one managing general partner, MLVP II Co. L.P. (the