

### Applicants' Conditions

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

1. The New Agreement will contain substantially the same terms and conditions as the Existing Agreement, except for the dates of execution and termination.
2. The fees earned by the Subadviser under the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account (including interest earned on such amounts), and amounts in the account will be paid: (i) to the Subadviser after the requisite approval of the New Agreement by the Fund's shareholders is obtained; or (ii) in the absence of such approval by the end of the Interim Period, to the Fund.
3. The shareholders of the Fund will vote on the approval of the New Agreement at the annual meeting scheduled to be held on October 20, 1999, or any adjournment thereof (but in no event later than December 31, 1999).
4. The Subadviser or its affiliates will pay the costs of preparing and filing the application and the costs relating to the solicitation and approval of the Fund's shareholders of the New Agreement.
5. The Subadviser will take all appropriate actions to ensure that the scope and quality of subadvisory and other services provided to the Fund by the Subadviser during the Interim Period under the New Agreement will be at least equivalent, in the judgment of the Board, including a majority of the Independent Directors, to the scope and quality of services currently provided under the Existing Agreement. In the event of any material change in personnel providing services pursuant to the New Agreement during the Interim Period, the Subadviser will apprise and consult with the Board to assure that the Board, including a majority of the Independent Directors, is satisfied that the services provided by the Subadviser 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. 99-25502 Filed 9-30-99; 8:45 am]

BILLING CODE 8010-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24054; 812-11476]

#### Endeavor Series Trust, et al.; Notice of Application

September 27, 1999.

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

**ACTION:** Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 ("Act") from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

**SUMMARY OF APPLICATION:** Endeavor Series Trust (the "Trust") and Endeavor Management Co. (the "Adviser") request an order that would permit applicants to enter into and materially amend sub-advisory agreements without shareholder approval and grant relief from certain disclosure requirements.

**APPLICANTS:** The Trust and the Adviser.

**FILING DATE:** The application was filed on January 20, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected 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. on October 22, 1999, 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, 2101 East Coast Highway, Suite 300, Corona del Mar, CA 92625.

#### FOR FURTHER INFORMATION CONTACT:

Bruce R. MacNeil, Staff Attorney, at (202) 942-0634, or Michael W. Mundt, 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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (tel. (202) 942-8090).

#### Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust is currently comprised of thirteen separate series (each a "Fund," and together, the "Funds"), each with its own investment objectives, policies, and restrictions.<sup>1</sup> The Funds are currently offered for sale only to various separate accounts of a life insurance company and its affiliates to fund variable annuity contracts or variable life insurance policies. The Adviser, a California corporation, serves as the investment adviser to the Funds and is registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust and the Adviser that was approved by the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), and each Fund's shareholders ("Advisory Agreement"). In addition, each Fund currently is advised by a subadviser ("Subadviser") pursuant to a separate investment advisory agreement ("Sub-Advisory Agreement"). Each Subadviser is an investment adviser registered under the Advisers Act. In the future, a Fund may be advised by more than one Subadviser. The Adviser selects each Subadviser, subject to approval by the Board, and compensates the Subadviser out of fees paid to the Adviser by the Fund.

3. Applicants request relief to permit the Adviser to enter into and amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser").

4. Applicants also request an exemption from the various disclosure

<sup>1</sup> Applicants also request relief with respect to future series of the Trust and all future registered open-end management investment companies that (a) are advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application ("Future Funds"). The Trust is the only existing investment company that currently intends to rely on the order.

provisions described below that may require the Funds to disclose the fees paid by the Adviser to the Subadvisers. The Trust will disclose for each Fund (both as a dollar amount and as a percentage of a Fund's net assets): (a) aggregate fees paid to the Adviser and Affiliated Subadvisers; and (b) aggregate fees paid to Subadvisers other than Affiliated Subadvisers ("Aggregate Fee Disclosure"). For any Fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 15(a)(3) requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N-SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S-X sets forth requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the SEC. Sections 6-07(2) (a), (b), and (c) of Regulation S-X require that investment companies include in their

financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if, and to the extent that, an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the Funds' investors rely on the Adviser to select Subadvisers best suited to achieve a Fund's investment objectives. Therefore, applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants note that the Advisory Agreement will remain subject to sections 15(a) and 15(c) of the Act and rule 18f-2 under the Act.

8. Applicants further assert that some Subadvisers use a "posted" rate schedule to set their fees. Applicants believe that some organizations may be unwilling to serve as Subadvisers at any fee rate other than their "posted" fee rates, unless the rates negotiated for the Funds are not publicly disclosed. Applicants believe that requiring disclosure of Subadvisers' fees may deprive the Adviser of its bargaining power to negotiate lower rates.

#### Applicants' Conditions

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

1. The Trust will disclose in its registration statement the Aggregate Fee Disclosure.

2. The Trust will not enter into a Sub-Advisory Agreement, on behalf of a Fund, with an Affiliated Subadviser without the Sub-Advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

4. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent

Trustees. The selection of such counsel will be within the discretion of the Independent Trustees.

5. The Adviser will provide the Board, no less often than quarterly, information about the Adviser's profitability for each Fund relying on the relief requested in the application. This information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

6. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board information showing the expected impact on the Adviser's profitability.

7. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board, that the change of Subadviser is in the best interests of the Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and the unitholders of any sub-account), and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

8. Before an existing Fund may rely on the order requested in the application, the operation of the Fund in a manner described in the application will be approved by a majority of its outstanding voting securities of the Fund, (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account) as defined in the Act, or in the case of a Future Fund whose shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 10 below, by the sole initial shareholder(s) before offering shares of the Future Fund to the public (or the variable contract owners through a separate account).

9. The Adviser will provide management and administrative services to each Fund relying on the requested order and, subject to the review and approval of the Board, will: (a) Set the Funds' overall investment strategies; (b) recommend Subadvisers; (c) allocate, and when appropriate, reallocate a Fund's assets among Subadvisers; (d) monitor and evaluate the investment performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply

with the Fund's investment objectives, policies, and restrictions.

10. The Trust will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

11. Within 60 days of the hiring of any Subadviser, the affected Fund will furnish its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the Sub-account) with all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. The Adviser will meet this condition by providing shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, exempt as modified by the order to permit Aggregate Fee Disclosure.

12. No trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for: (a) Ownership of interests in the Subadviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly-traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-25500 Filed 9-30-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27078]

### Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

September 24, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 19, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 19, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Ohio Valley Electric Corporation (70-8527)

Ohio Valley Electric Corporation ("Ohio Valley"), 3932 U.S. Route 23, P.O. Box 468, Piketon, Ohio 45661, an electric public utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act and rule 54 under the Act.

By orders dated December 28, 1994, December 12, 1996, and March 4, 1998 (HCAR Nos. 26203, 26624, and 26835, respectively) ("Existing Authorization"), Ohio Valley was authorized to incur short-term debt through the issuance and sale of notes to banks or other financial institutions in an aggregate amount not to exceed \$50 million outstanding at any one time, from time to time through December 31, 2001,

provided that no notes mature later than June 30, 2002.

Ohio Valley now proposes that the authorization in the Existing Authorization be increased so that Ohio Valley may issue and sell notes ("Notes") in an aggregate amount not to exceed \$100 million outstanding at any one time, from time to time through December 31, 2003. The Notes will mature not more than 270 days after the date of issuance or renewal, provided that no Notes will mature later than June 30, 2004. The Notes will bear interest at an annual rate not greater than the prime commercial rate of Citibank, N.A. (or its successor) in effect from time to time. These credit arrangements may require the payment of a fee not greater than 1/5 of 1% per annum of the size of the line of credit made available by the bank and the maintenance of additional balances of not greater than 20% of the line of credit. The maximum effective annual interest cost will not exceed 125% of the prime commercial rate in effect from time to time, or not more than 10% on the basis of a prime commercial rate of 8%.

The proceeds of the short-term debt incurred by Ohio Valley will be added to its general funds and used to pay its general obligations and for other corporate purposes, including coal supply inventory.

#### Northeast Utilities, et al. (70-8875)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, Northeast's public utility subsidiaries, The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037, Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, Holyoke Water Power Company ("Holyoke"), Canal Street, Holyoke, Massachusetts 01040, and Public Service Company of New Hampshire ("PSNH") and North Atlantic Energy Corporation ("North Atlantic"), each at 1000 Elm Street, Manchester, New Hampshire 03015, and Northeast's nonutility subsidiaries, NU Enterprises, Inc., Northeast Generation Service Company, Northeast Generation Company, Select Energy, Inc., and Mode 1 Communications, Inc., each at 107 Selden Street, Berlin, Connecticut 06037, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43 and 45 under the Act.

By orders dated November 20, 1996, February 11, 1997, March 25, 1997, May