

qualified United States banks," as those terms are defined in rule 17f-5 under the Act (as it may be amended).

25. If removal of securities purchased on the Established Exchanges becomes either prohibited by law or regulation or financially impracticable, up to 5% of ASA's assets may be held by an eligible foreign custodian or overseas branch of Chase in each of London, Japan, Australia, Switzerland, and Canada.

26. If an "eligible foreign custodian" or an overseas branch of the custodian is to be appointed as subcustodian, ASA will comply with the requirements of rule 17f-5, as it may be amended, prior to the purchase of securities on an Established Exchange.

27. ASA will withdraw its assets from the care of a subcustodian as soon as practicable, and in any event within 180 days of the date when a majority of the Board makes the determination that a particular subcustodian may no longer be considered eligible under rule 17f-5 of the Act, as it may be amended, or may no longer be considered an overseas branch of the custodian, or that continuance of the subcustodian arrangement would not be consistent with the best interests of ASA and its shareholders.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24320; 812-11872]

### STI Classic Funds, et al.; Notice of Application

February 28, 2000.

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

**ACTION:** Notice of an application 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 request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and certain stated liabilities of the series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

**APPLICANTS:** STI Classic Funds ("STI Funds"), ESC Strategic Funds, Inc.

("ESC Funds") and SunTrust Banks, Inc. ("SunTrust").

**FILING DATES:** The application was filed on December 3, 1999. Applicants have agreed to file an amendment to the application 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 Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 23, 2000, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, c/o W. John McGuire, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street, N.W. Washington, D.C. 20036-5869.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Counsel, at (202) 942-0714, or George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

#### Applicant's Representations

1. STI Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company and offers thirty-seven series, including the STI Classic Growth and Income Fund ("Growth and Income fund"), STI Small Cap Growth Stock Fund ("Small Cap Growth Fund") and STI Classic International Equity Fund ("International Equity Fund") (together, the "Existing Acquiring Funds") and a newly established series, STI Classic High Income Fund ("High Income fund") (together with the Existing Acquiring Funds, the Acquiring Funds). ESC Funds, a Maryland corporation, is registered under the Act as an open-end management investment company and offers five series, ESC

Strategic Small Cap Fund, ESC Strategic Small Cap II Fund, ESC Strategic International Equity Fund, ESC Strategic Appreciation Fund, and ESC Strategic Income Fund (together the "Acquired Funds") (the Acquired Funds and the Acquiring Funds, the "Funds").

2. SunTrust, a Georgia corporation, is a bank holding company and the parent of Trusco Capital Management, Inc. ("Trusco") and STI Capital Management, N.A. ("STI Capital"). Trusco is registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is the investment adviser to the Growth and Income Fund, High Income Fund and Small Cap Growth Fund. STI Capital, a bank, is exempt from registration under the Advisers Act and is the investment adviser to the International Equity Fund. SunTrust Equitable Securities ("STES"), a wholly-owned subsidiary of SunTrust, and an investment adviser registered under the Advisers Act, is the investment adviser to each of the Acquired Funds. Currently, bank subsidiaries of SunTrust own in the aggregate, in a fiduciary capacity, 25% or more of the outstanding voting securities of each of the Existing Acquiring Funds and 5% or more of the outstanding voting securities of three of the acquired Funds.

3. On January 15, 2000 and February 15, 2000, the board of trustees of the Acquired Funds and the board of directors of the Existing Acquiring Funds (together, the "Boards"), respectively, including all the trustees and directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), approved a plan of reorganization between the Funds (the "Plan"). Under the Plan, on the date of exchange ("Closing Date"), each Acquiring Fund will acquire all the assets and certain stated liabilities of the corresponding Acquired Fund or Funds in exchange for shares of the Acquiring Fund (the "Reorganization").<sup>1</sup> The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of business on the business day immediately before the Closing Date. The net asset value of the assets received by the Acquired Fund will be

<sup>1</sup> Under the Plan, the Acquired Fund will merge into the Existing Acquiring Funds as follows: On March 27, 2000, the ESC Strategic Small Cap Fund and Small Cap Fund II will merge into the Small Cap Growth Fund, the ESC Strategic International Equity Fund will merge into the International Equity Fund, and the ESC Strategic Appreciation Fund will merge into the Growth and Income Fund. On March 28, 2000, the ESC Strategic Income Fund will merge into the High Income Fund.

determined in the manner set forth in the Funds' current prospectus and statement of additional information. As soon as reasonably practical after the applicable Closing Date, each Acquired Fund will liquidate and distribute *pro rata* the shares of the Acquiring Fund to the shareholders of the Acquired Fund.

4. Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are substantially similar to those of its corresponding Acquiring Fund. The Acquired Funds each offer Class A shares and Class D shares. Both Class A and Class D shares have a front-end sales load and are subject to a distribution fee adopted under rule 12b-1 under the Act. The Acquiring Funds each offer: (a) Investor shares, which are subject to a front-end sales charge and rule 12b-1 distribution fee, and (b) Flex Shares, which are subject to a rule 12b-1 distribution fee and a contingent deferred sales charge ("CDSC").<sup>2</sup> Shareholders of Class A and Class D shares of the Acquired Funds will receive Investor and Flex Shares, respectively, of the corresponding Acquiring Fund.<sup>3</sup> The CDSC for the Flex Shares of each Acquiring Fund will be waived for shares issued to shareholders of the Acquired Funds as a result of the Reorganization. No sales charges will be imposed in connection with the Reorganization. The Acquired Funds will pay a portion of the Reorganization expenses as determined by their Board, including all of the Independent Directors, and all remaining expenses will be paid by STES and/or SunTrust.

5. The Boards, including all of the Independent Directors, determined that the Reorganization is in the best interests of the shareholders of each Fund, and that the interests of the existing shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered various factors, including: (a) The compatibility of the investment objectives, policies and limitations of the Acquired and corresponding Acquiring Funds; (b) the expense ratios of the Acquired and Acquiring Funds; (c) the terms and conditions of the Reorganization; (d) the tax-free nature of the Reorganization; and (e) the potential economies of scale to be gained from the Reorganization.

<sup>2</sup> The High Income Fund which will not offer Investors Shares initially.

<sup>3</sup> Shareholders of Class A and Class D shares of the ESC Strategic Income Fund will receive Flex Shares of the High Income Fund.

6. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of each Acquired Fund will have approved the Plan; (b) the Funds will have received opinions of counsel that the Reorganization will be tax-free for the Funds and their shareholders; and (c) applicants will receive from the Commission an exemption from section 17(a) of the Act for the Reorganization. The Plan may be terminated and the Reorganization abandoned at any time prior to either Closing Date by either Board if it is determined that circumstances have changed to make the Reorganization inadvisable. Applicants agree not to make any material changes to the Plan without prior Commission approval.

7. Definitive proxy materials have been filed with the Commission and were mailed to shareholders of the Acquired Funds on or about January 31, 2000. A special meeting of shareholders of the Acquired Funds is scheduled for March 22, 2000.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "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 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 that company.

2. Rule 17a-8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that rule 17a-8 may not be available in connection with the Reorganization because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common

directors, and/or common officers. Applicants state that subsidiary banks of SunTrust own in the aggregate, as a fiduciary, 25% or more of the outstanding voting securities of each of the Existing Acquiring Funds and that subsidiary banks of SunTrust, as a fiduciary, also own 5% or more of the outstanding voting securities of three of the Acquired Funds. Applicants state the SunTrust therefore may be deemed to be an affiliated person of those Funds, resulting in the Acquiring Funds being affiliated persons of an affiliated person of the Acquired Funds.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the previous of section 17(a) if evidence establishes that the terms of the proposed 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 that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the Reorganization are reasonable and fair and do not involve overreaching. Applicants state that the investment objectives and policies of each Acquired Fund are substantially similar to those of its corresponding Acquiring Fund. Applicants also state that the Boards, including all of the Independent Directors, have made the requisite determinations that the participation of the Acquired and Acquiring Funds in the Reorganization is in the best interests of each Fund and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganization will be on the basis of relative net asset value.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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