

thereunder,<sup>2</sup> to withdraw its Common Stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange ("Amex").

Amex listing guidelines require that, when a listed company is acquired by an unlisted company, even though the listed company is the nominal survivor, the Amex will apply its original listing criteria in evaluating the eligibility of the surviving company for listing. Representatives of the Amex have advised the Issuer that, upon completion of the Issuer's expected merger with PowerBrief, Inc., its Security will no longer be eligible to be listed on the Amex because the resultant combined company will not meet the Amex's original listing criteria. As a result, the Issuer has determined to voluntarily withdraw its Security from listing and registration on the Amex at this time. The Issuer has indicated that it will pursue the possibility of having the Security quoted in the unlisted over-the-counter market once it has ceased to trade on the Amex.

The Issuer has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Security and that the application relates solely to the withdrawal of the Security from listing on the Amex and registration under Section 12(b) of the Act.<sup>3</sup>

Any interested person may, on or before March 23, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24884; 812-12338]

### Barr Rosenberg Series Trust; AXA Rosenberg Investment Management LLC, and AXA Rosenberg Group LLC; Notice of Application

March 2, 2001.

**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 a series of a registered open-end management investment company to acquire all of the assets, subject to the liabilities, of another series of the investment company. Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

*Applicants:* G: Barr Rosenberg Series Trust (the "Trust"), AXA Rosenberg Investment Management LLC (the "Adviser"), and AXA Rosenberg Group LLC ("AXA Rosenberg Group").

*Filing Dates:* The application was filed on November 27, 2000, and was amended on March 2, 2001.

*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, 2001 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, NW., Washington, DC 20549-0609; Applicants: c/o J.B. Kittredge, Jr., Esq., Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624, Kenneth Reid and Sara Ronan, AXA Rosenberg Investment Management LLC, Four Orinda Way, Building E, Orinda, California 94563.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 or Janet M. Grossnickle,

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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is currently comprised of ten series, including the AXA Rosenberg Japan Fund (the "Japan Fund") and the AXA Rosenberg International Equity Fund (the "International Fund" and together with the Japan Fund, the "Funds").

2. The Adviser is the investment adviser for the Funds, and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). The Adviser is owned 100% by AXA Rosenberg Group. AXA Rosenberg Group is indirectly controlled by AXA Group, a French holding company for an international group of insurance and related financial services companies. AXA Group also controls The Equitable Assurance Society of the United States ("Equitable"). AXA Rosenberg Group owns for its own account approximately 82% of the outstanding voting securities of the Japan Fund, and Equitable owns for its own account approximately 100% of the outstanding voting securities of the International Fund.

3. On December 4, 2000, the board of directors of the Trust (the "Board"), including all of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Directors"), unanimously approved an Agreement and Plan of Reorganization (the "Plan"). The Plan provides that, on a date in the first quarter of 2001 (the "Merger Date"), substantially all of the assets, subject to the liabilities, of the Japan Fund will be sold to the International Fund (the "Merger"). The Plan provides that, as payment for such assets, the International Fund will issue to the Japan Fund a number of shares of designated classes which will be calculated to equal in aggregate value the net assets attributable to the shares of the corresponding classes of the Japan Fund acquired by the International Fund. The shares issued by each class of the International Fund will then be distributed to the shareholders of the

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78j(b).

<sup>4</sup> 17 CFR 200.30-3(a)(1).

corresponding class of the Japan fund on a *pro rata* basis. The Japan Fund will then be liquidated. Each Japan Fund shareholder will receive International Fund shares having an aggregate net asset value equal to the aggregate net asset value of the corresponding Japan Fund shares held by that shareholder, determined as of 4 p.m. on the Merger Date. The assets and liabilities of both funds will be valued at 4 p.m. on the Merger Date consistently in accordance with the valuation procedures set forth in the Trust's Registration Statement.

4. Applicants state that although not identical, the investment objectives, policies, and restrictions of the Funds are generally similar. The Japan Fund offers two classes of shares: Institutional Shares and Investor Shares. The International Fund offers five classes of shares: Class A, Class B, Class C, Institutional and Investor Shares. No shares of Classes A, B, and C are outstanding. Investor Shares of both Funds pay a distribution and shareholder service fee. Institutional and Investor Shares of both Funds are sold without any front-end or deferred sales charge. Institutional and Investor Shares of the International Fund have rights and obligations, and enjoy shareholder services that are identical in all respects to those of the corresponding class of Japan Fund shares. No sales charge or fee of any kind will be charged to either Fund's shareholders in connection with the Merger, and the Funds will incur no brokerage expenses or finders fee in connection with the transfer of assets of the Japan Fund to the International Fund.

5. On December 4, 2000, the Board determined that the Merger is in the best interests of each of the Funds and their shareholders and that the interests of existing shareholders of the Funds will not be diluted as a result of the Merger. In making this determination, the Board considered, among other things: (a) the terms and conditions of the Merger; (b) the tax-free nature of the Merger; (c) the anticipated expenses of the Merger, including the fact that the Adviser will pay such expenses except brokerage expenses, if any, in connection with the pre-Merger disposition of certain of the Japan Fund's assets; and (d) the compatibility of the Funds' investment objectives, policies and restrictions.

6. The Merger is subject to a number of conditions precedent, including: (a) the Plan shall have been approved by the holders of a majority of the outstanding shares of the Japan Fund; (b) the parties shall have complied with all material aspects of the Plan on or before the Merger Date; (c) the

applicants shall have received from the Commission the exemptive relief requested in the application; (d) the registration statement filed with the Commission shall have become effective; (e) the Funds shall have received opinions of legal counsel concerning the tax-free nature of the Merger; and (f) the Japan Fund shall have declared and paid dividends and other distributions on or before the Merger Date. The Plan may be terminated and the Merger abandoned by mutual agreement of the parties at any time prior to the Merger Date. In addition, the Plan may be terminated by either party under certain circumstances specified in the Plan. The applicants agree that they will not make any material changes to the Plan without first obtaining the prior approval of the Commission.

7. A Registration and Information Statement on Form N-14 was filed with the Commission on February 2, 2001. It is anticipated that the Prospectus/Information Statement will be mailed to the Japan Fund's shareholders on or about March 6, 2001, and that AXA Rosenberg Group will execute a majority shareholder consent approving the Merger on or about March 27, 2001. Applicants state that because AXA Rosenberg Group has indicated that it will approve the Merger, no shareholder proxies will be solicited.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act generally 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. Applicants state that the Funds may be deemed affiliated persons and thus the Merger may be prohibited by section 17(a).

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or 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 are satisfied.

3. Applicants state that they may not rely on rule 17a-8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. The Japan Fund and International Fund may also be deemed to be affiliated because of (a) AXA Rosenberg Group's estimated 82% ownership interest in the Japan Fund and its 100% ownership of the Adviser, and (b) the common control of AXA Rosenberg Group, the Adviser and Equitable, together with Equitable's ownership of approximately 100% of the outstanding shares of the International Fund.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the considerations to be paid, 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.

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 complete the Merger. Applicants submit that the Merger satisfies the standards of section 17(b) of the Act. Applicants state that the Board, including all of the Disinterested Trustees, has determined that participation in the Merger is in the best interests of each Fund, and that the interests of the Funds' shareholders will not be diluted as a result of the Merger. The applicants also state that the Merger will be based on the Funds' relative net asset values.

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

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

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