

reorganization of Progress Energy's wholesale operations. The Rowan Assets consist of a 480 megawatt gas-fired combustion turbine generation facility ("Rowan Facility"); associated electric interconnection equipment, fuel storage and handling facilities, and other facilities and equipment necessary for the generation of electricity and conducting related activities that are consistent with being an EWG, as that term is defined in section 32 of the Act. The Rowan Assets also include the Rowan Facility site. Applicants state that the purpose of this transaction is to permit Progress Energy to focus on developing and expanding a portfolio of wholesale generating assets in the Southeast.

Rowan, an EWG and a North Carolina limited liability company, is a wholly owned subsidiary of CP&L that has been organized principally for the purpose of constructing, owning, and selling power from an electric generation facility located in Rowan County, North Carolina. Applicants propose that, as part of this reorganization, Progress Ventures will acquire from CP&L all of Rowan's limited liability company interests, and Progress Ventures will contribute the Rowan interests to Genco Ventures.

CP&L proposes to transfer the Rowan Assets to Rowan at net book cost, subject to a possible adjustment by the North Carolina Utilities Commission ("NCUC"), in the event the NCUC determines that the market value of the Rowan Assets at transfer exceed the net book cost. As of September 30, 2001, the Rowan Assets had a net book cost of approximately \$180 million.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25252; 812-12456]

Heritage Capital Appreciation Trust, et al.; Notice of Application

November 2, 2001.

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

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") exempting applicants from section 15(a) of the Act and rule 18f-2 under the Act.

Summary of Application: Applicants request an order to permit them to enter into an materially amend subadvisory agreements without shareholder approval.

Applicants: Heritage Capital Appreciation Trust ("Capital Appreciation Trust"), Heritage Cash Trust ("Cash Trust"), Heritage Income Trust ("Income Trust"), Heritage Growth and Income Trust ("Growth and Income Trust"), Heritage Series Trust ("Series Trust," and together with Capital Appreciation Trust, Cash Trust, Income Trust, and Growth and Income Trust, the "Trusts"), Heritage Asset Management, Inc. ("Heritage") and Eagle Asset Management, Inc. ("Eagle," and together with Heritage, the "Managers").

Filing Dates: The application was filed on March 5, 2001 and amended on October 5, 2001. Applicants have agreed to file an amendment 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 November 27, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 880 Carillon Parkway, St. Petersburg, FL 33716.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942-0681, or Nadya B. Roytblat, Assistant Director, 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 (tel. 202-942-8090).

Applicants' Representations

1. Each Trust, organized as a Massachusetts business trust, is registered under the Act as an open-end

management investment company. Each Trust is organized as a series investment company and offers shares of one or more series (each a "Fund," and together, the "Funds"), each with its own investment objectives, policies and restrictions.¹ Each Manager serves as the investment adviser to one of the Funds and is registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Trusts, on behalf of each Fund, have entered into separate investment advisory agreements with the Managers ("Advisory Agreements"), pursuant to which each Manager serves as investment manager to the respective Fund. Each Advisory Agreement has been approved either by the initial shareholder of a Fund or by a Fund's public shareholders and by a majority of each Trust's board of trustees (each, the "Board," and collectively, the "Boards"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"). Under the terms of the Advisory Agreements, the Manager provides each Fund with investment research, advice and supervision while delegating the day-to-day portfolio management for each Fund to one or more subadvisers ("Subadvisers") pursuant to separate investment subadvisory agreements ("Subadvisory Agreements").² Each Subadviser is an investment adviser registered under the Advisers Act. The Manager selects each Subadviser, subject to approval by the respective Board. For the investment management services they provide to the Funds, the Managers receive the fee specified in the Advisory Agreement for each Fund, payable monthly based on average daily net assets, at an annual rate based on the Fund's average net assets. The fees of the Subadvisers, at rates negotiated between the Subadvisers and a Manager, are paid by the Managers out of the fees

¹ Applicants also request relief with respect to (a) any other Fund organized in the future, and (b) any other open-end management investment company or series thereof advised by a Manager or a person controlling, controlled by or under common control with a Manager ("Future Funds"), and together with the Funds, the "Funds"), provided that such Future Fund operates in substantially the same manner as the Funds with respect to a Manager's responsibility to select, evaluate and supervise Subadvisers (as defined below) and complies with the terms and conditions of the requested order. Each existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Fund contains the name of its Subadviser, the name of the Manager will precede the name of the Subadviser.

² Each Fund that employs a Subadviser is referred to as a "Subadvised Fund."

paid by Subadvised Funds to the Managers.

3. Each Manager establishes an investment program for each Subadvised Fund and supervises and evaluates the Subadvisers who make the day-to-day investment decisions for the respective Subadvised Funds. The Manager also is responsible for recommending whether to employ, terminate or replace a particular Subadviser. The Manager recommends the selection of a Subadviser based on a number of factors, including, whether the Subadviser has displayed discipline and thoroughness in pursuit of its stated investment objectives, has maintained consistently above-average performance, and has demonstrated a high level of service and responsibility to clients.

4. Applicants request relief to permit each Manager, subject to approval by the applicable Board, to enter into and materially amend Subadvisory Agreements without seeking 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 either Trust or the Manager, other than by reason of serving as a Subadviser to one or more of the Funds ("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 an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the 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. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such 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.

3. The Subadvised Funds' investment advisory arrangements are different from those of traditional investment companies. Applicants assert that the investors are relying on the applicable Manager's experience to select one or more Subadvisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the

perspective of the investors, the role of Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements may impose unnecessary costs and delays on the Funds, and may preclude the applicable Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements will remain subject to the requirements of section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions

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

1. Before a Fund may rely on the order requested by the application, the operation of the Fund in the manner described in the application will be approved by vote of a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before offering shares of such Fund to the public.

2. Any Fund relying on the requested relief 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 with respect to each Fund will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Board) to oversee Subadvisers and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Subadviser, the applicable Manager will furnish shareholders all information about the new Subadviser that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Subadviser. To meet this condition, the Managers will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934, as amended, within 90 days of the hiring of any new Subadviser.

4. A Manager will not enter into a Subadvisory Agreement with an Affiliated Sub-adviser without such agreement, including the compensation to be paid thereunder, being approved

by the shareholders of the applicable Fund.

5. At all times, a majority of each Fund's 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.

6. 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 Board minutes of the Fund, that any such change of Subadviser is in the best interest of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or Affiliated Subadviser derives an inappropriate advantage.

7. A Manager will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select, and recommend Subadvisers; (c) allocate and, when appropriate, reallocate a Fund's assets among multiple Subadvisers in those cases where a Fund has more than one Subadviser; (d) monitor and evaluate the investment performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objectives, policies, and restrictions.

8. No trustee or officer of a Fund or director or officer of the Managers 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 ownership of: (a) an interest in the Manager or any entity that controls, is controlled by or is under common control with the Manager; or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

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

Margaret H. McFarland,

Deputy Secretary.

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