

whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 27, 2000.

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

[FR Doc. 00-8069 Filed 3-31-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24368; 812-11790]

### Sun Capital Advisers Trust and Sun Capital Advisers, Inc.; Notice of Application

March 27, 2000.

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

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

*Summary of Application:* The requested order would permit applicants, Sun Capital Advisers Trust (the "Trust") and Sun Capital Advisers, Inc. (the "Adviser"), to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval.

*Filing Dates:* The application was filed on September 29, 1999, and amended on January 18, 2000. Applicants have agreed to file an additional 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 April 21, 2000, 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 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, One Sun Life Executive Park, Wellesley Hills, MA 02481-5699.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, 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, N.W., Washington, D.C. 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is comprised of six separate series, each with its own distinct investment objectives, policies, and restrictions (each, a "Fund").<sup>1</sup> Each Fund's shares are continually offered for sale as funding vehicles for variable annuity and variable life insurance contracts issued by participating insurance companies and for qualified pension plans.

2. The Adviser, an indirect wholly-owned subsidiary of Sun Life Assurance Company of Canada ("Sun Life"), is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The Trust, on behalf of each fund, has entered into investment advisory agreements with the Adviser (each, an "Advisory Agreement"), pursuant to which the Adviser serves as the investment adviser to the Funds. Each Advisory Agreement has been approved by the Funds' initial shareholder, Sun

<sup>1</sup> Applicants also request relief with respect to future Funds and any other registered open-end management investment company and its series that in the future: (a) Is advised by the Adviser, or a person controlling, controlled by or under common control with the Adviser; (b) operates in substantially the same manner as the Funds with regard to the Adviser's responsibility to select, evaluate, and supervise Subadvisers; and (c) complies with the terms and conditions in the application ("Future Funds"). The only existing registered open-end management investment company that currently intends to rely on the order is named as an applicant

Life, and by a majority of the Trust's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Adviser ("Independent Trustees").

3. Under the Advisory Agreements, the Adviser, subject to Board oversight, provides each Fund with investment research, advice, and supervision, and furnishes an investment program for each Fund. The Advisory Agreements also provide that the Adviser may delegate its responsibility for providing investment advice and making investment decisions for a particular Fund to one or more subadvisers ("Subadvisers"). The Adviser selects Subadvisers based on the Adviser's continuing evaluation of their skills in managing assets pursuant to particular investment styles. The Adviser screens potential new Subadvisers and engages in an on-going analysis of the continued advisability as to the retention of its existing Subadvisers. From time to time, the Adviser may recommend to the Board that the services of a Subadviser be terminated. Each Fund pays the Adviser a fee for its services based on the Fund's average daily net assets.

4. The Adviser has entered into investment subadvisory agreements ("Subadvisory Agreements") with Wellington Capital Management LLC ("Wellington") to serve as Subadviser to three of the Funds. Wellington is not an "affiliated person," as defined in section 2(a)(3) of the Act ("Affiliated Person"), of the Trust or the Adviser. The Trust may in the future offer Funds managed by other Subadvisers or by multiple Subadvisers. Each Subadviser will have discretionary authority to invest the assets of a particular Fund, subject to general supervision by the Adviser and the Board, and will be registered under the Advisers Act or exempt from registration. The Adviser pays each Subadviser's fees out of the fees the Adviser receives from each Fund.

5. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to a Subadviser that is an Affiliated Person of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Subadviser").

### Applicant's 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 under a written

contract approved by a majority of the investment company's outstanding voting shares. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act, or from any rule thereunder, to the extent that the 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 request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f-2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that a Fund's investors rely on the Adviser to select and monitor Subadvisers best suited to manage the Fund's portfolio. Applicants submit that, from the perspective of an investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment company advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Funds, and may preclude the Adviser from promptly acting in a manner considered advisable by the Board. Applicants note that the Advisory Agreements will remain subject to section 15(a) of the Act and rule 18f-2 under the Act, including the requirements for shareholder approval.

#### **Applicant's Conditions**

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

1. Before a Fund may rely on the order requested in the application, the operation of the Fund's in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities (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 by its initial shareholder, provided that, in the case of the approval by the initial shareholder, the pertinent Fund's 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) purchase shares on the basis of a prospectus containing the disclosure

contemplated by condition 2 below. Similarly, before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder before a public offering of shares of such Future Fund, provided that 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) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund 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 the ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination and replacement.

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

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without the agreement, including the compensation 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 unit holders of the sub-account).

5. When a Subadviser change 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, that the change 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, the best interests of the Fund and unit holders of any such sub-account), and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser for any Fund, the Fund shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unit holders of the sub-account) will be furnished all relevant information about a new Subadviser that would be contained in a proxy statement, including any change in such disclosure

caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders (or unit holders) with an information statement meeting the disclosure requirements of Regulations 14C, Schedule 14C, and Item 22 of Schedule 4A under the Securities Exchange Act of 1934 within 90 days of the hiring of a Subadviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and, subject to review and approval by the Board, will: (i) Set the Fund's overall investment strategies; (ii) select Subadviser(s); (iii) monitor and evaluate the performance of Subadviser(s); (iv) ensure that the Subadviser(s) comply with each Fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance; and (b) allocate and, where appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. 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 that trustee, director or officer), any interest in a Subadviser, except for: (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under a common control with the Adviser; or (ii) ownership of 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 any 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.*

[FR Doc. 00-8070 Filed 3-31-00; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Agency Meetings**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 3, 2000.