

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

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[Investment Company Act Release No. 21570; 812-9820]

EAI Select Managers Equity Fund, et al.; Notice of Application

December 6, 1995.

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

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: EAI Select Managers Equity Fund ("Fund"), Evaluation Associates Capital Markets, Incorporated ("Manager"), EAI Partners, L.P. ("EAI"), Evaluation Associates, Incorporated 401(K) Plan and Trust ("EAI Plan"), Harding Service Corporation, et al. Profit Sharing Plan and Trust ("Harding Plan"), and Stockwood VII, Inc. 401K Plan ("Stockwood Plan", and, together with the EAI Plan and the Harding Plan, the "Affiliated Plans").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act exempting applicants from section 17(a) of the Act and pursuant to section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit a collective investment account sponsored by EAI to transfer its securities to the Fund.

FILING DATES: The application was filed on October 16, 1995 and amended on December 1, 1995. Applicants agree to file an additional amendment, the substance of which is incorporated herein, 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 December 28, 1995 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. Applicants: EAI, 200 Connecticut Avenue, Suite 700, Norwalk, Connecticut 06854-1958; Harding Plan and Stockwood Plan, 300 South Street, P.O. Box 1975, Morriston, New Jersey 07962-1975.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Alison E. Baur, 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.

Applicants' Representations

1. The Fund is an open-end management investment company organized as a Massachusetts business trust. The Fund has filed a registration statement under the Securities Act of 1933 which will become effective prior to the consummation of the transactions described in this application. The Manager is the investment adviser of the Fund and presently owns all of the Fund's outstanding shares. EAI is the parent of the Manager and is the sponsor of the EAI Plan, an in-house employee benefit plan for employees of EAI, the Manager, and their affiliates.

2. The Harding Plan is an employee benefit plan for employees of Harding Service Corporation ("Harding"). The Stockwood Plan is an employee benefit plan for employees of Stockwood VII, Inc. ("Stockwood"). Certain trustees of the Harding Plan and the Stockwood Plan have a greater than five percent direct or indirect equity interest in EAI. In addition, certain officers, employees and/or affiliates of Harding and Stockwood have a greater than five percent direct or indirect equity interest in EAI.

3. The Affiliated Plans and certain other participant-directed employee benefit plans (collectively, the "Plans") currently invest in The EAI Small Managers Equity Fund Trust, a collective investment account ("Account"). EAI is the investment adviser of the Account. The Account has not registered under the Act in reliance on the exception from the definition of "investment company" under section 3(c)(1) of the Act. Section 3(c)(1) provides that an issuer whose outstanding securities are beneficially owned by not more than one hundred

persons and which is not making and does not propose to make a public offering of its securities is not an investment company. In The PanAgora Group Trust (pub. avail. April 29, 1994), the staff stated that, for purposes of section 3(c)(1), the staff would consider a defined contribution plan participant who decides whether or how much to invest in a private investment company to be a beneficial owner of the company's securities. Participants in the Plans have discretion to direct investment of their assets, and there are more than 100 such participants. Therefore, the Account may no longer rely on the exception in section 3(c)(1) unless the Plans' investment in the Account is terminated by December 31, 1995.¹

4. EAI believes that the Fund is a suitable alternative investment vehicle for the Plans. Applicants contemplate that the Account would make an in-kind distribution of securities held in the Account's portfolio to the Plans and that those Plans choosing to invest in the Fund would purchase shares of the Fund by contributing the distributed securities to the Fund in exchange for Fund shares. The Account would remain available to employee benefit plans whose participants cannot direct asset investment.

5. Upon its withdrawal from the Account, each Plan would receive securities equal in value to its *pro rata* beneficial interest in the Account. Each Plan purchasing shares of the Fund by contribution of the securities distributed to it would receive shares of the Fund having a net asset value equal to the value of the securities contributed. Assets of the Plans used to purchase Fund shares would be valued at "current market value" as defined in rule 17a-7(b). The assets of the Fund would be invested with the same objectives and in the same manner as the assets of the Account are presently invested.

6. Each Plan choosing to purchase Fund shares by an in-kind contribution of securities would do so only upon written direction of the Plan fiduciaries. A party independent of EAI would provide such direction for the Affiliated Plans. EAI and/or the Manager would provide each Plan fiduciary with the Fund's current prospectus and a written statement disclosing the fee structure under which the Manager would be paid. Because the total expenses to be paid by the Fund will be higher than those paid by the Account, a Plan purchasing shares of the Fund would

¹ See Latham & Watkins (pub. avail. Dec. 28, 1994).

¹⁰ 17 CFR 200.30-3(a)(12) (1994).