

it can conduct a timely evaluation of the change as part of the license amendment review process, or submits information to the NRC stating that it will restore the current licensing basis (CLB).

- Either (1) the cause of the deviation was not within the licensee's control, such that the change was not avoidable by reasonable licensee quality assurance measures or management controls, or (2) the licensee placed the cause of the unplanned change in its corrective action program to ensure comprehensive corrective actions to address the cause of the change to preclude recurrence.

For similar issues not identified by the licensee, the NRC may refrain from issuing an NOV/NCV on a case-by-case basis depending upon the circumstances of the issue, such as whether the requirements were clearly understood or should have been understood at the time, the cause of the issue, and why the licensee did not identify the issue.

When the NRC determines that an unplanned change during construction associated with a violation of requirements meets the criteria outlined above and the licensee without delay submits the necessary information for NRC evaluation, the licensee's continued failure to meet the current licensing basis will not be treated as a willful or continuing violation only while the licensee prepares the license amendment request and the NRC reviews the submittal. (Note: If the NRC subsequently denies a requested license amendment change, or if the NRC requires additional measures to be taken for the change to be considered acceptable, then a separate NOV or order may be issued to ensure appropriate corrective actions are taken, including restoring the configuration to the CLB).

The following two footnotes relating to the new Section 3.9 were added:

The NRC may issue an enforcement action, including consideration of willfulness, for the cause of these unplanned changes, such as a failure to implement appropriate work controls or quality control measures, or a failure to adhere to procedures, processes, instructions, or standards that implement NRC requirements. This enforcement may be appropriate for the actions that led to the CdC issue.

and

NRC-identified violations that result in a "use as built" determination or that result in an unplanned change (or both) will normally be dispositioned as a cited, noncited, or minor violation, whether or not the unplanned change issue is resolved by a subsequently approved license amendment.

9. Revisions to Section 6.0, "Violation Examples"

The following second paragraph was added to the introduction of the section:

Many examples are written to reflect the risks associated with the use of nuclear materials. However, violations during construction generally occur before the nuclear material and its associated risk are

present. Therefore, the NRC will consider the lower risk significance of violations that occur during construction in the areas of emergency preparedness, reactor operator licensing, and security and may reduce the severity level for those violations from that indicated by the examples in those areas. In order to maintain consistent application, the staff must coordinate with the Office of Enforcement before applying this lower risk significance concept for violations that occur during construction.

The NRC staff recognizes that, although certain requirements (i.e., those for emergency preparedness, reactor operator licensing, and security) apply generally during construction activities, flexibility is needed to factor in the lower risk associated with certain violations that occur during construction.

10. Revisions to Section 7.0, "Glossary"

The glossary definition of "licensee" was revised to reflect the addition of language to Section 1.2, "Applicability:"

"Licensee" means a person or entity authorized to conduct activities under a license issued by the Commission. However, in most cases in the Policy, the term is applied broadly to refer to any or all of entities listed in Section 1.2, "Applicability."

Procedural Requirements

Paperwork Reduction Act Statement

This policy statement contains and references new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval number 3150-0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting documents displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Dated at Rockville, Maryland, this 1st day of June, 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

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POSTAL REGULATORY COMMISSION

[Docket No. N2012-2; Order No. 1361]

Proposed Post Office Structure Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request for an advisory opinion regarding its Post Office Structure Plan. This document invites public comments on the request and addresses several related procedural steps.

DATES:

Notices of intervention are due: June 18, 2012, 4:30 p.m. Eastern Time.

Hearing on the Postal Service's direct case: July 11, 2012, at 9:30 a.m. (Commission hearing room, 901 New York Ave. NW 20268-0001, Suite 200).

ADDRESSES: Submit notices of intervention electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <http://www.prc.gov/prc-pages/filing-online/login.aspx>. Persons interested in intervening who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or DocketAdmins@prc.gov (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On May 25, 2012, the Postal Service filed a request with the Commission for an advisory opinion under 39 U.S.C. 3661 regarding its Post Office Structure Plan (POSTPlan) under which it intends to examine and consider changes to operating methods and conditions, including hours of operation used to provide retail and other services and products at approximately 17,700 of the more than 32,000 postal retail locations.¹

The Postal Service states that under the POSTPlan there is a "possibility that the scope of the changes in service * * * could be 'substantially nationwide,' within the meaning of 39 U.S.C. 3661(b)." *Id.* at 2. The Postal Service states that if it determines that retail operations at facilities should be discontinued, postal patrons would

¹ United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, May 25, 2012, at 1 (Request).

have to obtain services at a different postal facility or through alternate access channels. *Id.*

The Postal Service has identified the POSTPlan as having the potential to change service nationwide and has asked for a Commission advisory opinion. Under these circumstances, the Commission shall provide an opportunity for a hearing on the record and provide a written opinion on the POSTPlan. 39 U.S.C. 3661(c).

Request. The Request is accompanied by testimony from one witness, Jeffrey C. Day (USPS-T-1), and five library references.²

Witness Day, Manager, Retail Operations, in the Office of Delivery and Post Office Operations at Postal Service Headquarters states that he has primary responsibility for developing policies and procedures relating to the day-to-day operations of post offices, opening or closing of retail facilities, and improving the customer experience. USPS-T-1 at i.

In his testimony, witness Day describes the current state of the Postal Service's retail network and recent trends in customer behavior. *Id.* at 2-5. He then compares the retail access and services offered by the Postal Service with actual retail activity. *Id.* at 5-9. The testimony describes the POSTPlan as a Headquarters-initiated review of all EAS Level 16 or below post offices by examining workload. *Id.* at 11. Witness Day explains that approximately 17,700 post offices will be examined under the POSTPlan.³ *Id.* Those post offices with an Adjusted Earned Workload (AEWL) for FY 2011 greater than 5.74 hours will be categorized as EAS Level 18 or above. *Id.* at 12. Those post offices with an AEWL of 5.74 hours or fewer will be categorized as either Remotely Managed Post Offices (RMPOs) or Part-Time Post Offices (PTPOs). *Id.* at 11.

Witness Day states that RMPOs will be subject to realigned weekday window service of 2, 4, or 6 hours per weekday, depending upon workload. *Id.* at 12-13. He explains that RMPOs realigned with 6 window service hours will be staffed by a career employee, and RMPOs realigned with 2 or 4 window service hours will be staffed by a non-career employee. He notes that RMPOs will

report to and be managed by a postmaster located at a designated Administrative Post Office (APO). *Id.* at 13.

Witness Day states that those post offices that would otherwise qualify as RMPOs will be classified as PTPOs if (1) the post office is 25 or more driving miles from the nearest post office, or (2) the post office is outside a 25-mile radius of the nearest APO. He explains that PTPOs will be staffed by a career employee for 6 hours of window service each weekday, regardless of workload, and will report to a district office rather than an APO. *Id.* at 13-14.

Witness Day also states that the Postal Service generally will not study for discontinuance post offices that are part of the POSTPlan "unless the community has a strong preference for discontinuance * * *." *Id.* at 15. For post offices currently being studied for discontinuance, the Postal Service will hold the discontinuance process in abeyance pending a determination of whether to realign retail window hours. *Id.* at 18. When the community expresses a strong preference for one of the alternative access means other than realigned window service hours under the POSTPlan, the Postal Service will proceed with a discontinuance study utilizing the procedures set forth in "USPS Handbook PO-101." ⁴

Witness Day states that, beginning in September 2012, the Postal Service will survey customers to solicit their preferences for realigned window service hours or a discontinuance study. *Id.* at 17, 21. The Postal Service will then review the surveys and hold a community meeting to discuss the survey results. If the Postal Service determines to maintain the post office with realigned retail hours, it will consider feedback from the community meeting to determine the time of day in which retail window service will be available and the timeline for implementation. If the post office is not continued with realigned window service hours, the Postal Service will likely study the facility for discontinuance. *Id.* at 17-18.

The Request and all supporting public materials are on file in the Commission's docket room for inspection during regular business hours, and are available on the Commission's Web site at <http://www.prc.gov>.

⁴ *Id.* at 22-23; see 39 CFR part 241. Witness Day notes that the discontinuance process has been improved so that it now uses actual employee costs based on historical data, includes detailed financial information such as one-time costs not previously accounted for, and captures more non-revenue transactions. USPS-T-1 at 23-24.

Timing. The Postal Service believes that its filing satisfies the requirements of 39 CFR 3001.72, which states that a request for an advisory opinion must be filed at least 90 days in advance of the effective date of the proposed changes. See Request at 10. Although witness Day indicates that the Postal Service will begin upgrading post offices identified as APOs and those with an AEWL of greater than 5.74 hours per day to EAS Level 18 post offices in June 2012, he also states that "no reduction in hours or discontinuance study pursuant to POSTPlan will occur until more than 90 days after the filing of the request for an advisory opinion with the PRC." USPS-T-1 at 21.

Further procedures. 39 U.S.C. 3661(c) requires that the Commission afford an opportunity for a formal, on-the-record hearing of the Postal Service's Request under the terms specified in sections 556 and 557 of title 5 of the United States Code before issuing its advisory opinion. Based on its preliminary review of the Request, the Commission finds it appropriate to expedite the proceeding. To facilitate expeditious review of the matter, the Commission expects parties to make judicious use of discovery, discovery objections, and motions' practice. Every effort should be made to confer to resolve disputes informally.

All interested persons are hereby notified that notices of intervention in this proceeding shall be due on or before June 18, 2012. See 39 CFR 3001.20 and 3001.20a. Consistent with rule 20, each person filing a notice of intervention shall, *inter alia*, specify the nature of his/her interest and whether or not he/she requests a hearing. See 39 CFR 3001.20. Discovery may be propounded upon filing a notice of intervention. Responses to discovery shall be due within 7 days.

The procedural schedule shown below the signature of this order will be followed in this proceeding assuming that no participant desires to present rebuttal testimony. Participants who wish to present rebuttal testimony must notify the Commission of their intent to file, and the nature of their rebuttal, by July 11, 2012. Rebuttal testimony, if requested, will be due July 18, 2012. The balance of the procedural schedule will be revised accordingly.

Public Representative. Section 3661(c) of title 39 requires the participation of an "officer of the Commission who shall be required to represent the interests of the general public." Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated to serve as the Public Representative to represent the interests of the general public in this proceeding.

² See Notice of United States Postal Service of Filing of Initial Library References, May 25, 2012, identifying and describing the library references filed in support of the Postal Service's direct case.

³ The post offices examined under the POSTPlan include all 17,728 EAS Level 16 or below post offices that were operational as of the end of FY2011. Witness Day explains that this number includes post offices that have been suspended or become non-operational since the close of FY2011, but that those post offices will not be part of the POSTPlan. USPS-T-1 at 1 n.1.

Neither the Public Representative nor any additional persons assigned to assist the Public Representative shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity.

It is ordered:

1. The Commission establishes Docket No. N2012-2 to consider the Postal

Service Request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. The procedural schedule for this proceeding is set forth below the signature of this order.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Emmett Rand

Costich to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

June 18, 2012	Notices of intervention.
June 28, 2012	Close of discovery on Postal Service direct case.
July 2, 2012	Notice of intent to conduct oral cross-examination.
July 11, 2012	Hearing on the Postal Service's direct case (if requested) (9:30 a.m. in the Commission's hearing room).
July 11, 2012	Notice of intent to file rebuttal testimony.
July 18, 2012	Rebuttal testimony (if requested).
July 20, 2012	Filing of briefs (if no rebuttal testimony).
July 27, 2012	Filing of reply briefs (if no rebuttal testimony).

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BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30092; File No. 812-14001]

Hennion & Walsh, Inc. and Smart Trust; Notice of Application

May 31, 2012.

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

ACTION: Notice of application for an order under section 12(d)(1)(j) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A), (B) and (C) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order that would permit certain series of a unit investment trust ("UIT") registered under the Act to acquire shares of registered management investment companies and unit investment trusts or series thereof (the "Funds") both within and outside the same group of investment companies.

APPLICANTS: Hennion & Walsh, Inc. (the "Depositor") and Smart Trust (the "Trust").

DATES: *Filing Date:* The application was filed on January 25, 2012.

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 June 25, 2012 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: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: 2001 Route 46, Waterview Plaza, Parsippany, NJ 07054.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Mary Kay Frech, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is a UIT registered under the Act.¹ Each Series will be a series of

¹ Applicants request that the order also extend to future registered UITs sponsored by the Depositor or an entity controlling, controlled by or under common control with the Depositor and their respective series (the future UITs, together with the

a Trust and will offer units for sale to the public ("Units"). Each Series will be created pursuant to a trust agreement which will incorporate by reference a master trust agreement among the Depositor, Hennion & Walsh Asset Management, Inc., as supervisor, and a financial institution that satisfies the criteria in section 26(a) of the Act (the "Trustee"). The Depositor is a broker dealer registered under the Securities Exchange Act of 1934 and member of the Financial Industry Regulatory Authority, Inc. ("FINRA").

2. Applicants request relief to permit a Series to invest in registered investment companies or series thereof ("Funds") that are (a) part of the same "group of investment companies" (as that term is defined in section 12(d)(1)(G) of the Act) as the Series ("Affiliated Funds"), and (b) not part of the same group of investment companies as the Series ("Unaffiliated Funds"). Each of the Funds will be registered as a closed-end management investment company ("Closed-end Fund"), an open-end management investment company ("Open-end Fund") or a UIT. An Unaffiliated Fund that is a UIT is referred to as an "Unaffiliated Underlying Trust." An Unaffiliated Fund that is a Closed-end Fund or Open-end Fund is referred to as an "Unaffiliated Underlying Fund." Certain of the Funds may be registered as Open-end Funds or UITs, but have received exemptive relief in order that their shares may be traded at

Trust, are collectively the "Trusts" and the series of the Trusts are the "Series"). All existing entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.