

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 97-31617 Filed 12-2-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22910; 812-10638]

### First American Funds, Inc., et al.

November 25, 1997.

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

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(d) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 to permit certain joint transactions.

**SUMMARY OF APPLICATION:** The requested order would supersede a prior order to permit certain registered investment companies to invest excess cash in money market funds advised by the same adviser for cash management purposes. The order also would amend a prior order permitting a fund of funds to purchase shares of certain investment companies in the same group of investment companies in excess of the limits of section 12(d)(1).

**Applicants:** First American Funds, Inc. ("FAF"), First American Strategy Funds, Inc. ("FASF"), First American Investment Funds, Inc. ("FAIF"), including each current series and each subsequently created series of FAF, FASF and FAIF, U.S. Bank National Association or any other entity controlling, controlled by, or under common control with U.S. Bank National Association ("U.S. Bank"), and other registered investment companies or their series that are now or in the future advised by U.S. Bank.

**Filing Dates:** The application was filed on April 29, 1997 and amended on October 1, 1997. Applicants have agreed to file an additional amendment during the notice period, the substance of which is incorporated in this notice.

**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 22, 1997, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. FAF, FASF, and FAIF, Oaks, Pennsylvania 19456; U.S. Bank, 601 Second Avenue South, Minneapolis, Minnesota 55402.

**FOR FURTHER INFORMATION CONTACT:** J. Amanda Machen, Senior Counsel, at (202) 942-7120, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (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 for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### Applicants' Representations

1. FAIF is a registered open-end management investment company that currently offers twenty-three series, each of which is a variable net asset value fund. FAF is a registered open-end management investment company that currently offers three series, each of which is a money market fund subject to the requirements of rule 2a-7 under the Act. Each existing series of FAF and any future money market portfolio of FAF or FAIF or of other registered investment companies advised by U.S. Bank are referred to collectively as "Money Market Funds." Each existing series of FAIF and any future variable net asset value portfolio of FAIF or FAF or of other registered investment companies advised by U.S. Bank are referred to collectively as "Non-Money Market Funds." The Money Market Funds and the Non-Money Market Funds are referred to as the "Funds."

2. FASF is a registered open-end management investment company that currently offers four series, each of which is a variable net asset value fund. Under an existing order ("Fund of Funds Order"),<sup>1</sup> FASF operates as a "fund of funds," the principal investments of which are shares of

certain series of FAIF and FAF ("Underlying Portfolios").

3. U.S. Bank, a wholly owned subsidiary of U.S. Bancorp ("USBC"), a bank holding company, serves as investment adviser for each series of FAIF, FAF and FASF. U.S. Bank has retained Marvin & Palmer Associates, Inc. ("Marvin & Palmer") as a sub-adviser for FAIF's International Fund (U.S. Bank, Marvin & Palmer, and any future sub-adviser to any Fund are referred to collectively as the "Investment Advisers"). First Trust National Association (the "Custodian") a wholly owned subsidiary of USBC, serves as custodian for the assets of each series of FAIF, FAF, and FASF.

4. Pursuant to an exemptive order, the Non-Money Market Funds can invest in the money market series of FAF in excess of the limits of section 12(d)(1) of the Act, so long as each Fund's aggregate investment in the money market fund does not exceed the greater of 5% of the Fund's total net assets or \$2.5 million ("Cash Sweep Order").<sup>2</sup>

5. Applicants request an order that would (a) supersede the Cash Sweep Order to permit (i) each of the Funds ("Investing Funds") to use the cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the Money Market Funds, provided that no Investing Fund will have more than an aggregate of 25% of its total assets invested in all Money Market Funds at any time, and (ii) the Money Market Funds to sell their shares to, and to redeem their shares from, the Investing Funds; and (b) amend the Fund of Funds Order to permit FASF to invest in shares of Underlying Portfolios that will in turn invest in shares of the Money Market Funds to the extent permitted by the order sought in this application ("Amended Cash Sweep Order").<sup>3</sup> Because the Amended Cash Sweep Order will allow the Underlying Portfolios to invest greater amounts in the Money Market Funds than is allowed under the Cash Sweep Order, condition 2 to the Fund of Funds Order would be amended to allow FASF to continue to invest in the Underlying Portfolios.<sup>4</sup>

6. Each of the Funds has, or may have, Uninvested Cash held by its Custodian.

<sup>2</sup> First American Investment Funds, Inc., Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

<sup>3</sup> The Amended Cash Sweep Order also would delete conditions 3 and 6 in the Fund of Funds Order.

<sup>4</sup> The fund of funds series of FASF are not "Investing Funds" as defined in the application, therefore any investment by them in the Money Market Funds would be under the Fund of Funds Order and subject to the conditions of that Order.

<sup>1</sup> First American Investment Strategy Funds, Inc., Investment Company Act Release Nos. 22173 (Aug. 26, 1996) (notice) and 22241 (Sept. 23, 1996) (order).

Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new cash received from investors.<sup>5</sup> By investing Uninvested Cash in the Money Market Funds, applicants believe that the Investing Funds will be able to reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash and further diversify their holdings.

### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. The perceived abuses section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex fund structures.

2. Applicants' request would permit the Investing Funds to use Uninvested Cash to acquire shares of Money Market Funds in excess of the percentage limitations set out in section 12(d)(1)(A). Applicants propose that each Investing Fund be permitted to invest in shares of the Money Market Funds so long as no Investing Fund will have more than an aggregate of 25% of its total assets invested in all Money Market Funds at any time. Applicants' request also would permit Money Market Funds to sell their securities to Investing Funds in excess of the percentage limitations set out in section 12(d)(1)(B). Applicants state that relief permitting an Investing Fund to invest

up to 25% of its total net assets in shares of the Money Market Funds is appropriate because at any given time, 25% or more of an Investing Fund's total assets may be comprised of Uninvested Cash. Applicants also request amendment of condition 2 to the Fund of Funds Order to permit the FASF funds to continue to invest in shares of Underlying Portfolios, which in turn invest in shares of the Money Market Funds, in reliance on the Amended Cash Sweep Order.

3. Section 12(d)(1)(J) provides that the SEC can exempt any persons or transactions from section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. For the following reasons, applicants believe the proposed transactions satisfy this standard.

4. Applicants believe that none of the concerns underlying section 12(d)(1) are presented by the proposed transactions. Applicants state that, because the Investment Advisers and their affiliates will not derive any investment advisory or other fees in connection with the Investing Funds' purchase or sale of shares of the Money Market Funds, the Investment Advisers are not susceptible to undue influence in their management of the Money Market Funds because of threatened redemptions from the Money Market Funds or loss of fees.

5. Applicants maintain that the proposed arrangement would not result in the inappropriate layering of either sales charges or investment advisory fees. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under rule 12b-1 under the Act, or service fee. In addition, each Investment Adviser will credit to the respective Investing Fund, or waive, the investment advisory fees that it earns based on the Investing Fund's investments in the Money Market Funds to the extent the fees are based upon the Investing Fund's assets invested in shares of the Money Market Funds.

6. Regarding the complexity of the proposed structure, applicants note that the net asset value of each current Money Market Fund is, and has been since its inception, maintained at a constant \$1.00 per share. Therefore, applicants submit that the value of the Investing Funds' investments in the Money Market Funds will be easily determinable. In addition, applicants maintain that the Fund of Funds Order already permits FASF to invest in Underlying Portfolios, which invest in Money Market Funds, provided that the Underlying Portfolios comply with certain conditions. As a result,

applicants submit that no additional complexity will be created by amending the Fund of Funds Order to reflect the Amended Cash Sweep Order.

7. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, or under common control with, the investment adviser. Under section 2(a)(3), each series within FAIF, FASF, and FAF may be deemed to be under common control with each of the others, and thus an affiliated person of each of the other series of FAIF, FASF, and FAF. As a result, section 17(a) would bar the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of the shares by the Money Market Funds.

8. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit, for the reasons discussed below, that their request for relief satisfies these standards.

9. Applicants submit that the proposed transactions will not involve overreaching because the Investing Funds retain their ability to invest their Uninvested Cash directly in money market instruments, as authorized by their respective investment objectives and policies, if they believe they can obtain a higher return or for any other reason. Similarly, each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of directors determines that the sales would adversely affect its portfolio management and operations. In addition, applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid

<sup>5</sup> Uninvested Cash does not include cash collateral received in connection with the Investing Funds' securities lending activities.

and received for these shares by any other shareholder.

10. Section 17(d) and rule 17d-1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company unless the SEC has issued an order authorizing the arrangement. In determining whether to grant an exemption under rule 17d-1, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants. Applicants state that each Investment Fund, by purchasing shares of the Money Market Funds, each Investment Adviser, by managing the assets of the Investing Funds, and each of the Money Market Funds, by selling shares to the Investing Funds, could be deemed to be participants in a joint enterprise. Applicants assert that investments by the Investing Funds in shares of the Money Market Funds will be on the same basis and will be indistinguishable from that of any other participant or shareholder and that the transactions will be consistent with the Act. In addition, applicants state that the proposed transactions may result in cost savings for the Investing Funds.

#### Applicants' Conditions

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

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealer's Rules of Conduct).

2. No Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1) of the Act.

3. Each of the Investing Funds will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in all Money Market Funds taken as a group does not exceed 25% of the Investing Fund's total assets.

4. Each Fund shall be advised by U.S. Bank or a person controlling, controlled by, or under common control with U.S. Bank.

5. Investment by an Investing Fund in shares of a Money Market Fund will be consistent with each Investing Fund's

respective investment restrictions and policies as set forth in its prospectuses and statements of additional information.

6. The applicants will cause the Investment Advisers, in their capacities as advisers for the Money Market Funds, to remit to the respective Investing Fund, or waive, an amount equal to all investment advisory fees received by them under their respective advisory agreements with the Money Market Funds to the extent such fees are based upon the Investing Fund's assets invested in shares of the Money Market Funds. Any of these fees remitted or waived will not be subject to recoupment by the Funds' Investment Advisers at a later date.

7. FASF may continue to rely on the Funds of Funds Order, subject to compliance with the conditions it contains, except for conditions 3 and 6, which are deleted. Condition 2 to the Fund of Funds Order is amended to read as follows: "No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Underlying Portfolio other than a Money Market Fund acquires securities of another investment company under exemptive relief from the Commission permitting the Underlying Portfolio to purchase securities of an affiliated money market fund for short-term cash management purposes."

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-31619 Filed 12-2-97; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22906; File No. 812-10752]

#### Fortis Benefits Insurance Company, et al.; Notice of Application

November 24, 1997.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of Application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act").

**SUMMARY OF APPLICATION:** Applicants seek an order approving the substitution of shares of the Limited Maturity Bond Portfolio of the Neuberger & Berman Advisers Management Trust ("N & B

Bond Portfolio") for shares of the Strong Advantage Fund II series ("Strong Advantage Portfolio") of the Strong Variable Insurance Funds, Inc. ("Strong Funds") and the substitution of shares of the Federated Fund for U.S.

Government Securities II portfolio of Federated Insurance Series ("Federated Government Portfolio") for shares of the Strong Government Securities Fund II series of the Strong Funds ("Strong Government Portfolio").

**Applicants:** Fortis Benefits Insurance Company ("Fortis Benefits") and Variable Account D of Fortis Benefits Insurance Company (the "Variable Account").

**Filing Date:** The application was filed on August 11, 1997, and amended on October 31, 1997.

**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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 19, 1997, and 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 requester'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 Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 500 Bielenberg Drive, Woodbury, Minnesota 55125.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Olson, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

#### Applicants' Representations

1. Fortis Benefits, a stock life insurance company organized under the laws of Minnesota, is qualified to sell life insurance contracts in the District of Columbia and all states except New York. Fortis Benefits is an indirect wholly-owned subsidiary of Fortis, Inc., which is owned, indirectly, 50% by Fortis AMEV and 50% by Fortis AG. Fortis AMEV is a diversified financial