

liability. If the PBGC makes a finding under section 4203(d)(5) that no substantial damage has occurred, or if it does not make a finding of substantial damage under section 4203(d)(4) within the 60-month period referred to above, then the bond will be canceled or the escrow refunded, and the employer will have no further liability with respect to the cessation.

#### The Request

The Freight Drivers and Helpers Local Union No. 557 Pension Fund (the "Fund") has requested that the PBGC find that the cessation of contributions by Kane Transfer Company ("Kane"), together with cessations by other contributing employers, has resulted in substantial damage to the Fund's contribution base. The Fund represents that over 90 percent of its contributing employers are trucking employers. It also asserts that Kane is a trucking employer and ceased all covered operations under the Fund in December 1993.

On June 9, 1997, the PBGC published (at 62 FR 31465) a notice of the pendency of the Fund's request. The notice solicited comments by interested persons; Kane submitted the only comment in response to the notice. The factual data in this notice are derived from information submitted by the parties.

#### The Decision

Over the 1980-1995 period, the contribution base of the Fund, i.e., the number of hours for which contributions are required, fell by nearly 60 percent, from 5.5 million in 1980 to 2.3 million in 1995. In the 5-year period ending with 1995, the contribution base declined by 13 percent (although the contribution base increased by about 3 percent between 1994 and 1995). The number of active employees declined from 3,496 in 1980 to 1,287 in 1995, a drop of over 60 percent. The number of active employees fell by just over 20 percent in the 1991-1995 period.

During the 1986-1994 period, 29 contributing employers withdrew from the Fund, leaving 28 employers in the Fund as of the end of 1994. Since 1990, 13 employers have withdrawn.

As the Fund's contribution base declined, its contribution rate increased. In 1980, the highest hourly rate was \$1.13; in 1986, that rate was \$1.95; and in 1995, it was \$2.93. Net employer contributions have declined from nearly \$8 million in 1986 to \$6.3 million in 1995. However, since 1992, contributions have increased slightly. In the 1986-1995 period, benefit payments exceeded net contributions in all but

one year. Plan assets increased by nearly 70 percent during this period.

The Fund's unfunded vested benefits in 1992, the year prior to Kane's withdrawal, was \$12 million; in 1993, it rose to \$18 million. Since 1993, unfunded vested benefits have declined. In 1994, the figure was \$5.8 million, and as of the January 1, 1996 valuation, the market value of assets slightly exceeded the actuarial present value of all accumulated benefits.

The January 1, 1996 valuation indicates that projected employer contributions for 1996 would exceed the sum of normal cost, 15 year amortization of unfunded liabilities, and administrative costs (collectively, "scheduled costs") by 26 percent. In 1994 and 1995, contributions exceeded scheduled costs by 14 percent and 23 percent, respectively.

Kane has filed a response urging the PBGC to reject the Fund's request on the basis that the Fund has not shown that it has suffered substantial damage to its contribution base. Kane asserts that the Fund's contribution base has been stable or even increasing, "having grown by 3% between 1994 and 1995." Furthermore, according to Kane, the documents submitted by the Fund show "no unfunded liability \* \* \* projected contributions exceeding projected costs by more than 20% in 1996, and tremendous income to the Fund from investment growth."

After reviewing the information submitted by the Fund and by Kane, the PBGC concludes that it is unable to find that the Fund has suffered substantial damage to its contribution base as a result of Kane's cessation of contributions considered together with other cessations. Although the information submitted shows that the Fund has experienced a significant decline in contribution base units ("CBUs") and total contributions since the 1980's, these declines must be considered in the context of the Fund's overall financial condition, which has been improving. Unfunded vested benefits have declined since 1993 and annual contributions are in excess of the amount required to meet the minimum funding standard. Furthermore, the Fund's assets have increased by nearly 70 percent during the 1986-1995 period. Those conditions militate against a finding of substantial damage to the contribution base.

Nevertheless, the facts presented do not demonstrate that the Fund has suffered no substantial damage to its contributions base as a result of employer cessations. Accordingly, the PBGC declines to find either substantial damage or no substantial damage, under

ERISA sections 4203(d)(4) or (d)(5), respectively. The effect of this decision is that the bond or escrow furnished by Kane shall remain in place until the expiration of the 60-month period described in section 4203(d)(4), unless and until the PBGC should hereafter be requested to and make a finding of either substantial damage or no substantial damage as a result of Kane's cessation considered together with other employer cessations.

Issued at Washington, D.C., on this 30th day of December, 1997.

**David M. Strauss,**

*Executive Director.*

[FR Doc. 98-536 Filed 1-8-98; 8:45 am]

BILLING CODE 7708-01-P

---

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review, Comment Request

Extension: Notice of Exempt Preliminary Roll-Up Communication, SEC File No. 270-396; OMB Control No. 3235-0452.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

A Notice of Exempt Preliminary Roll-Up Communication is required to be filed by a person making such a communication by Exchange Act Rules 14a-2(b)(4) and 14a-6(a). The Notice results in an estimated total annual reporting burden of 1 hour.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 5, 1998.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-540 Filed 1-8-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22991; 812-10542]

### Advantus Capital Management, Inc. et al.; Notice of Application

January 5, 1998.

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

**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; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"); item 2, 5(b)(iii), and 16(a)(iii) of Form N-1A; item 3 of Form N-14; item 48 of Form N-SAR; and sections 6-07(2) (a), (b), and (c) of Regulation S-X.

#### Summary of Application

The order would permit applicants to enter into and materially amend investment management agreements with subadvisers without obtaining shareholder approval, and grant relief from certain disclosure requirements regarding advisory fees paid to the subadvisers.

#### Applicants

Advantus Series Fund, Inc. (the "Fund") (formerly MIMLIC Series Fund, Inc.) and Advantus Capital Management, Inc. (the "Adviser").

#### Filing Dates

The application was filed on March 5, 1997, and amended on August 22, 1997, and December 30, 1997.

#### 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 January 26, 1998, 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 such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 400 Robert Street North, St. Paul, MN 55101-2098.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenless, 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, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

#### Applicants' Representations

1. The Fund is organized as a Minnesota corporation and is registered under the Act as an open-end management investment company. The Fund is comprised of twenty series (the "Portfolios"), each of which has its own investment objectives and policies.<sup>1</sup> Shares of the Fund are sold only to insurance companies and their separate accounts. The Fund currently serves as the underlying investment medium for sums invested in variable annuity and variable life contracts (collectively, "variable contracts") issued by the Minnesota Mutual Life Insurance Company ("Minnesota Mutual"). Shares of the Portfolios are sold without sales charges or asset-based distribution charges.

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Fund pursuant to an advisory agreement between the Adviser and the Fund (the "Advisory Agreement").

3. Under the terms of the Advisory Agreement, the Adviser administers the business and affairs of the Fund. For all Portfolios, the Adviser furnishes the Fund, at its own expense, office space and all necessary office facilities, equipment, and personnel for servicing the investments of the Fund. The Adviser maintains all records necessary in the operation of the Fund, including

<sup>1</sup> Applicants also request relief with respect to: (a) any series of the Fund organized in the future; and (b) all subsequently registered open-end management investment companies that in the future: (i) serve as funding vehicles for variable annuity or variable life insurance contracts of Minnesota Mutual; (ii) are advised by the Adviser, or any entity controlling, controlled by, or under common control with, the Adviser; (iii) use a multi-manager structure as described in the application; and (iv) comply with the conditions to the requested order ("Future Companies").

records pertaining to its shareholders and investments. Each Portfolio pays the Adviser a fee for its services equal to a percentage of average daily net assets.

4. Currently, the Adviser manages certain of the Portfolios directly, and engages subadvisers ("Managers") to manage certain of the Portfolios. Management of those Portfolios is provided by one Manager. In the future, the Adviser may allocate portions of a Portfolio's assets among multiple specialist Managers with dissimilar investment styles and security selection disciplines. The Adviser recommends selection of Managers to the Fund's board of directors (the "Board") based on the continuing quantitative and qualitative evaluation of their skills and proven abilities to manage assets pursuant to a specific investment style. When it employs one or more Managers to manage the investment and reinvestment of all or a portion of the assets of a Portfolio (the "Manager of Managers Strategy"), the Adviser monitors the compliance of each Manager with the investment objectives and related policies of each Portfolio, reviews the performance of each Manager and reports periodically on performance to the Board, and recommends to the Board that the Fund terminate a particular Manager when deemed in the best interests of a Portfolio. Each Manager performs services pursuant to a written agreement (the "Portfolio Management Agreement"). Managers' fees are paid by the Adviser out of its fees from the Portfolios at rates negotiated with the Managers by the Adviser.

5. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 under the Act to permit the Fund and the Adviser to enter into and materially amend Portfolio Management Agreements without obtaining shareholder approval (*i.e.*, approval of the variable contract owners). For each Portfolio, applicants also request relief from certain disclosure requirements under the Act to disclose the following (both as a dollar amount and as a percentage of a Portfolio's net assets) ("Limited Fee Disclosure"): (a) Aggregate fees paid to the Adviser and any Manager that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of either the Fund or the Adviser other than by reason of serving as a Manager to one or more of the Portfolios (an "Affiliated Manager"); and (b) aggregate fees paid to Managers other than Affiliated Managers.