

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28238; 812-13246]

U.S. Bank National Association, et al.; Notice of Application

April 16, 2008

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

Action: Notice of application under sections 6(c), 12(d)(1)(J), 17(b) and 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 thereunder for an exemption from sections 12(d)(1)(A) and (B) of the Act, sections 17(a)(1) and (2) of the Act, and section 17(e) of the Act, and for an order permitting certain joint transactions pursuant to rule 17d-1 under the Act.

Applicants: U.S. Bank National Association ("Bank"), FAF Advisors, Inc. ("FAF Advisors"), Mount Vernon Securities Lending Trust ("Fund"), and First American Investment Funds, Inc. ("FAIF").

Summary of Application: Applicants request an order to permit (i) certain registered management investment companies and their series ("Other Lending Funds") that participate as lenders in a securities lending program ("Program") administered by FAF Advisors or an entity controlling, controlled by, or under common control with FAF Advisors ("Lending Agent") to pay, and Lending Agent to accept, fees based on a share of revenue generated from securities lending transactions under the Program; (ii) the Bank and any entity controlled or under common control with the Bank ("U.S. Bank Entity") to engage in principal transactions with, and receive fees or commissions for acting as broker or agent in connection with the purchase or sale of securities for, the Other Lending Funds, irrespective of any affiliation that may arise solely because of an investment by an Other Lending Fund of cash collateral derived from loaned securities under the Program ("Cash Collateral") in shares of any series of the Fund ("Investment

Funds"); and (iii) the Other Lending Funds, FAIF and any other registered management investment company or series thereof advised by FAIF Advisors or any other entity controlling, controlled by, or under common control with the Bank that may participate as a lender in the Program<sup>1</sup> ("Affiliated Lending Funds," and together with the Other Lending Funds, "Registered Lending Funds"), and any entity relying on section 3(c)(1) or 3(c)(7) that may participate as a lender in the Program ("Private Lending Funds," and together with the Registered Lending Funds, "Lending Funds"), to invest Cash Collateral in existing and future Investment Funds that are short-term bond funds ("Non Money Market Investment Funds").

Filing Dates: The application was filed on November 14, 2005, and amended on November 6, 2006, November 16, 2007, and March 13, 2008.

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 May 12, 2008, 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 may request notification of a hearing by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: FAF Advisors, 800 Nicollet Mall, Minneapolis, MN 55402.

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<sup>1</sup> The Affiliated Lending Funds participate in the Program pursuant to a prior Commission order. First American Investment Funds, Inc., Investment Company Act Release Nos. 22181 (Aug. 28, 1996) (notice) and 22245 (Sep. 24, 1996) (order).

For Further Information Contact: Nadya Roytblat, Assistant Director, at (202) 551-6823 (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 from the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549-1520 (tel. 202-551-8090).

Applicants' Representations:

1. The Bank is a national banking association and the largest subsidiary of U.S. Bancorp, a multi-state financial holding company headquartered in Minneapolis, Minnesota. The Bank serves as custodian for several of the Lending Funds. FAF Advisors is a wholly owned subsidiary of the Bank and is registered as an investment adviser under the Investment Advisers Act of 1940. FAF Advisors currently serves as Lending Agent administering the Program. FAIF is a Maryland corporation and is registered under the Act as an open-end management investment company. Certain of the series of FAIF are Affiliated Lending Funds.<sup>2</sup>

2. The Fund is a Delaware statutory trust organized in 2005 and is registered as an open-end management investment company under the Act. The Fund currently offers two Investment Funds, one of which is a money market fund and the other a Non Money Market Investment Fund, a short-term bond fund that seeks current income consistent with the preservation of capital by investing in fixed-income securities and maintaining a dollar-weighted average portfolio maturity of three years or less. Any future Non Money Market Investment Fund will be a short term bond fund. The Investment Funds are offered exclusively to the

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<sup>2</sup> All existing Affiliated Lending Funds that currently intend to rely on the requested order are named as applicants. Any other existing or future entity may rely on the order only in accordance with the terms and conditions of the application.

Lending Funds as low expense investment vehicles for Cash Collateral. Shares of the Investment Funds are not subject to any sales charge or service fee. FAF Advisors serves as the investment adviser, transfer agent and administrator of the Fund. The Bank serves as custodian of the Fund.

3. Under the Program, the Lending Agent enters into an agreement with a Lending Fund ("Lending Agreement") whereby the Lending Fund appoints the Lending Agent to serve as its agent to lend its portfolio securities and authorizes the Lending Agent to enter into a master borrowing agreement ("Borrowing Agreement") with each person designated by the Lending Fund as eligible to borrow some or all of such securities ("Borrower"). All securities lent under a Borrowing Agreement are exchanged for cash or other types of collateral from the Borrower. When the collateral delivered is cash, the Lending Agreement authorizes and instructs the Lending Agent, as agent for the Lending Fund, to invest the cash in accordance with specific guidelines provided by the Lending Fund. With respect to loans involving cash collateral, the Lending Agent is compensated for its services under the Program indirectly through the income earned on the collateral. Pursuant to the Borrowing Agreement, the Lending Fund commits to pay the Borrower a negotiated return on the collateral for the term of the loan ("Borrower's Rebate"). The return on the Lending Fund's investment of the Cash Collateral during the term of the loan is intended to satisfy that commitment. The difference between the Borrower's Rebate and the actual return on the investment of the collateral ("Securities Lending Revenue") is divided between the Lending Fund and the Lending Agent in accordance with the terms of the Lending Agreement. In the case of collateral other than cash, the Borrower will pay a loan fee to the Lending Fund. The amount of the loan fee (also "Securities Lending Revenue") is divided

between the Lending Fund and the Lending Agent in accordance with the terms of the Lending Agreement.

Applicants' Legal Analysis:

Applicants request an order (i) pursuant to section 17(d) of the Act and rule 17d-1 thereunder to permit the Other Lending Funds to pay, and a Lending Agent to accept, fees based on a share of the Securities Lending Revenue; (ii) pursuant to sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) and 17(e) of the Act to permit any U.S. Bank Entity to engage in principal transactions in securities and other property with the Other Lending Funds and receive fees or commissions from the Other Lending Funds for acting as a broker or agent in connection with the purchase or sale of securities for the Other Lending Funds; (iii) pursuant to section 12(d)(1)(J) of the Act to permit the Lending Funds to invest Cash Collateral in shares of the Non Money Market Funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act; and (iv) pursuant to sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and pursuant to section 17(d) of the Act and rule 17d-1 thereunder, to permit the Non Money Market Funds to sell their shares to and redeem their shares from the Registered Lending Funds in connection with the investment of Cash Collateral, and the Non Money Market Funds, the Lending Funds and the Lending Agent to effect certain transactions incident to such investment in the Non Money Market Funds.<sup>3</sup>

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<sup>3</sup> The duties to be performed by a Lending Agent with respect to any Registered Lending Fund will not exceed the parameters set forth in Norwest Bank, Minnesota, N.A., SEC No-Action Letter (pub. avail. May 25, 1995) ("Norwest Bank"). The applicants are not requesting, and the Commission is not passing on, any relief from sections 15, 17(d) or 17(e) of the Act with respect to any duties of the lending agent that are not enumerated in Norwest Bank.

### Lending Agent Fee

1. Section 17(d) of the Act and rule 17d-1 under the Act, in relevant part, prohibit any affiliated person or any affiliated person of an affiliated person ("Second Tier Affiliate") of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, without an order of the Commission.

2. Section 2(a)(3) of the Act defines an affiliated person to include, in relevant part, (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (ii) any person 5% or more of whose outstanding voting securities is owned, controlled or held with power to vote by the other person, (iii) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (vi) an investment adviser to an investment company.

3. As investment adviser to an Investment Fund, FAF Advisors is an affiliated person of the Investment Fund. Applicants state that, if an Other Lending Fund acquires 5% or more of an Investment Fund's outstanding voting securities, the Other Lending Fund will become an affiliated person of the Investment Fund and a Second Tier Affiliate of the Lending Agent. Applicants also state that the Lending Agent may be a Second Tier Affiliate of an Other Lending Fund if the Other Lending Fund is a series of a registered investment company and FAF Advisors or another entity controlling, controlled by, or under common control with the Bank serves as investment adviser to another series of the same registered investment company.

4. Due to these possible affiliations, applicants state that section 17(d) and rule 17d-1 may prohibit a Lending Agent from receiving a fee from the Other Lending Funds based on a share of the Securities Lending Revenue, and request an order pursuant to rule 17d-1 to permit the arrangement. Under rule 17d-1, in passing on applications for orders under section 17(d), the Commission 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 Other Lending Fund has its own investment adviser that is not an affiliated person or Second Tier Affiliate of the Lending Agent, and that any fee arrangement between a Lending Agent and an Other Lending Fund with respect to the Program will be the product of arms length bargaining. Therefore, applicants submit that the proposed arrangement satisfies the standards for an order under rule 17d-1.

#### Transactions Between the Other Lending Funds and U.S. Bank Entities

1. Sections 17(a)(1) and (2) of the Act generally prohibit, in relevant part, an affiliated person or Second Tier Affiliate of a registered investment company, acting as principal, from selling to or purchasing from the registered company, or any company controlled by the registered company, any security or other property. Section 17(e)(1) of the Act makes it unlawful, in relevant part, for any affiliated person of a registered investment company or Second Tier Affiliate, when acting as agent, to accept from any source compensation for the purchase or sale of any property to or for such registered investment company, except in the course of such person's business as an underwriter or broker. Section 17(e)(2) of the Act makes it unlawful, in relevant part, for any affiliated person of a registered investment company or Second Tier Affiliate, when acting as broker, in connection with the sale of securities to or by

such registered investment company, to receive from any source a commission, fee or other remuneration for effecting such transaction which exceeds the limits set forth in section 17(e)(2).

2. Applicants state that FAF Advisors, controlled by U.S. Bancorp, may be deemed to control the Investment Funds, and that each U.S. Bank Entity may be deemed to be under common control with, and thus an affiliated person of, the Investment Funds. If an Other Lending Fund acquires 5% or more of an Investment Fund's outstanding voting securities, the Other Lending Fund will become an affiliated person of the Investment Fund and a Second Tier Affiliate of the U.S. Bank Entities. Therefore, applicants seek an exemption under sections 6(c) and 17(b) of the Act from the prohibitions in sections 17(a)(1) and (2) of the Act and section 17(e) of the Act.

3. Section 17(b) of the Act provides that the Commission, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such 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.



4. Applicants submit that no element of self-dealing would be involved in the principal transactions between a U.S. Bank Entity and an Other Lending Fund because, in each instance, no U.S. Bank Entity has any influence over the decisions made by any Other Lending Fund. Applicants state that each Other Lending Fund has its own investment adviser that is not an affiliated person or Second Tier Affiliate of any U.S. Bank Entity and that, in economic reality, may be a competitor of the Bank. The applicants submit that each transaction between an Other Lending Fund and a U.S. Bank Entity would therefore be a product of arms length bargaining, and that the standards of sections 6(c) and 17(b) are met.

5. With respect to section 17(e), applicants state that certain U.S. Bank Entities may rely on rule 17e-1 under the Act in effecting transactions for the Other Lending Funds, whereas other U.S. Bank Entities that do not meet the definition of "broker" in section 2(a)(5) of the Act, may not rely on rule 17e-1. Applicants request relief under section 6(c) from section 17(e)(1) solely to the extent that a U.S. Bank Entity may not meet the definition of "broker" under the Act, and from section 17(e)(2), provided that the U.S. Bank Entity complies with rule 17e-1 under the Act except for the requirements in rule 17e-1(b)(3) and 17e-1(d)(2) concerning quarterly board review and the related recordkeeping requirements. Applicants submit that the requested relief is consistent with a similar exemption provided in rule 12d1-1 under the Act for affiliations analogous to those between an Other Lending Fund and a U.S. Bank Entity.

Investment by the Lending Funds of Cash Collateral in the Non Money Market Investment Funds

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring

company's total assets, or, together with the securities of other investment companies, 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, any principal underwriter thereof, or any broker or dealer may sell securities of the investment company 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. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit the Lending Funds to invest Cash Collateral in shares of the Non Money Market Investment Funds in excess of the limits imposed by section 12(d)(1)(A), and each Non Money Market Investment Fund to sell its shares to the Lending Funds in excess of the limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by sections 12(d)(1)(A) and (B) of the Act will be created by the proposed investment of Cash Collateral in the Non Money Market Investment Funds. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Non Money Market Investment Funds will not be subject to a sales charge or service fee. Applicants further represent that there will not be any duplicative advisory fees. Applicants also represent that no Non Money Market Investment Fund will acquire shares of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than as permitted by rule 12d1-1 under the Act, so that there will not be any complex fund structure.

4. Applicants also request an exemption under sections 6(c) and 17(b) of the Act,

and an order pursuant to rule 17d-1 under the Act, to permit the Non Money Market Investment Funds to sell their shares to the Registered Lending Funds, the Registered Lending Funds to redeem shares from the Non Money Market Funds, and the Lending Agent to effectuate the investment of Cash Collateral in the Non Money Market Funds.

5. Applicants state that the Affiliated Lending Funds and the Non Money Market Investment Funds may be deemed to be under common control and therefore affiliated persons of each other. Applicants also state that if any Other Lending Fund acquires 5% or more of a Non Money Market Investment Fund's shares, the Other Lending Fund and the Non Money Market Investment Fund may be deemed affiliated persons of each other. Therefore, the sale of shares of the Non Money Market Investment Fund to the Registered Lending Funds, and the redemption of such shares in connection with the investment of Cash Collateral may be prohibited under sections 17(a)(1) and (2) of the Act. Applicants also state that the Lending Funds (by purchasing and redeeming shares of the Non Money Market Investment Funds), FAF Advisors (by managing the portfolio securities of the Affiliated Lending Funds and the Non Money Market Investment Funds at the same time that the Affiliated Lending Funds' Cash Collateral is invested in the Non Money Market Investment Funds, and serving as lending agent and receiving a portion of the Securities Lending Revenue), and the Non Money Market Investment Funds (by selling their shares to and redeeming shares from the Lending Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

6. Applicants state that the requested relief satisfies the standards of sections 6(c) and 17(b) of the Act and rule 17d-1 under the Act. Applicants state that shares of the Non Money Market Funds will be purchased and redeemed by the Lending Funds at net asset value, on the same basis as the shares are purchased and redeemed by all other shareholders of the Non Money Market Funds.

Applicants' Conditions:

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

1. The securities lending program of each Registered Lending Fund, including the investment of Cash Collateral, will comply with all present and future guidelines of the Commission and its staff regarding securities lending arrangements.

2. No Registered Lending Fund will purchase shares of any Investment Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Registered Lending Fund that are not interested persons of the Registered Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees of each Registered Lending Fund also will evaluate the Program no less frequently than annually and determine that investing Cash Collateral in the Investment Fund is in the best interests of the shareholders of the Registered Lending Fund.

3. Investment in shares of an Investment Fund by a particular Registered Lending Fund will be consistent with the Registered Lending Fund's investment objectives and policies. A Registered Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if the Registered Lending Fund has approved that Investment Fund for investment and if that Investment Fund invests in the types of instruments that the Registered Lending Fund has

authorized for the investment of its Cash Collateral.

4. Shares of any Investment Fund will not be subject to a sales charge or service fee, as defined in rules 2830(b)(8) and (9), respectively, of the Conduct Rules of the National Association of Securities Dealers, Inc.

5. No Investment Fund may invest in shares of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act, other than as permitted by rule 12d1-1 under the Act.

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

Florence E. Harmon  
Deputy Secretary