

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 27057 / September 2, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-12029

In the Matter of

U.S. Bank National Association,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940 AS
TO U.S. BANK NATIONAL ASSOCIATION**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against U.S. Bank National Association (“U.S. Bank”).

II.

In anticipation of the institution of these proceedings, U.S. Bank has submitted an Offer of Settlement (“U.S. Bank’s Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, U.S. Bank consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and U.S. Bank’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to U.S. Bank’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

1. U.S. Bank is a national banking association with its principal place of business in Minneapolis, Minnesota. U.S. Bank operates in a number of states throughout the United States. During the relevant period, U.S. Bank was not registered with the Commission as an investment adviser because, at that time, banks were generally excluded from the definition of adviser under the Investment Advisers Act of 1940 (“Advisers Act”). U.S. Bank served as adviser to First American Investment Funds, Inc.’s (“FAIF”) (1) International Fund, (2) International Index Fund, and (3) Emerging Markets Fund and First American Insurance Portfolio Inc.’s (“FAIP”) International Portfolio (collectively referred to as the “Funds”) from April 1994 to May 2001.

Other Relevant Entities

2. U.S. Bancorp Asset Management, Inc. (“USBAM”), a Delaware corporation, headquartered in Minneapolis, Minnesota, is an investment advisory company. USBAM registered with the Commission as an investment adviser on April 13, 2001 and remains a registered investment adviser. USBAM is a wholly owned subsidiary of U.S. Bank. USBAM served as adviser to First American Investment Funds, Inc.’s International Fund and Emerging Markets Fund and First American Insurance Portfolio Inc.’s International Portfolio from May 2001 to September 2001. USBAM continues to advise First American Investment Funds, Inc.’s International Fund to this day.

3. First American Insurance Portfolios, Inc. (“FAIP”) is a registered open-end investment company based in Minneapolis, Minnesota. FAIP incorporated in Minnesota on August 27, 1999. U.S. Bank engaged in foreign exchange transactions with the International Portfolio series of FAIP.

4. First American Investment Funds, Inc. (“FAIF”) is a registered open-end investment company based in Minneapolis, Minnesota. FAIF incorporated in Maryland on August 20, 1987 under the name “SECURAL Mutual Funds, Inc.” The company changed its name to FAIF in 1991. U.S. Bank engaged in foreign exchange transactions with three series of FAIF: (1) the International Fund; (2) the International Index Fund; and (3) the Emerging Markets Fund.

Facts

5. From April 1994 to September 2001, U.S. Bank engaged as a principal in approximately \$6.99 billion in prohibited affiliated foreign exchange transactions with the Funds.²

6. To purchase various foreign securities, the Funds needed to obtain the specific foreign currency in order to settle the purchase transactions. The Funds also needed to convert foreign currency into U.S. dollars when they sold foreign securities in order to settle the

² USBAM, U.S. Bank’s subsidiary, served as adviser to the Funds during the final few months in which the Bank engaged in foreign exchange transactions with the Funds (May 2001-September 2001).

sale transactions. Thus, the Funds required an entity with which they could buy and sell foreign currency. From the time each Fund portfolio began trading foreign securities until September 2001, when the business went to a non-affiliate, U.S. Bank's Foreign Exchange Department effected a substantial portion of the Funds' foreign currency transactions required for trade settlement in principal transactions.

7. U.S. Bank's Asset Management Division was ultimately responsible for ensuring that the Funds' purchases and sales of foreign currency were completed properly. However, it delegated the day to day responsibility of managing the Funds to the Funds' sub-adviser. To effect the foreign exchange transactions, the Funds' sub-adviser sent instructions to the Funds' custodian during the relevant period. The Funds' sub-adviser's instructions detailed (i) in the case of a purchase, what type of currency was needed to complete the purchase and (ii) in the case of a sale, the amount of foreign currency that needed to be converted to U.S. dollars after settlement of the sale. The Custodian then provided the conversion instructions to U.S. Bank's Foreign Exchange Department. Once it received the instructions, the Foreign Exchange Department, acting in a principal capacity, purchased or sold the applicable foreign currency, taking the resulting position into its own inventory. During this period, U.S. Bank's Foreign Exchange Department knew it was doing business with the Funds.

8. For seven years, U.S. Bank's Foreign Exchange Department acted as a principal in all foreign exchange transactions necessary to settle the Funds' foreign equity trades, unless they involved a currency for which U.S. Bank's Foreign Exchange Department did not make a market. Over this time period, the total amount of transactions conducted by U.S. Bank's Foreign Exchange Department with the Funds totaled approximately \$6.99 billion.

9. While U.S. Bank was not an entity required to register with the Commission as an adviser during the relevant period, the Investment Company Act prohibited principal affiliated transactions between U.S. Bank and the Funds. However, U.S. Bank did not have adequate compliance procedures and controls designed to prevent principal affiliated transactions between U.S. Bank and the Funds.

10. Specifically, from 1994 to 1995, no U.S. Bank employee had compliance responsibility for its Asset Management Division. In 1995, the regulation staff of the Midwest Regional Office of the Commission ("regulation staff") sent a deficiency letter to the Funds noting, among other things, that U.S. Bank's Asset Management Division did not have the requisite code of ethics or adequate procedures to prevent certain transactions prohibited by the Investment Company Act. Although U.S. Bank initiated certain changes in its procedures as a result of the regulation staff's deficiency letters, these actions did not adequately address potential violations of the Investment Company Act. Specifically, U.S. Bank did not adequately staff its compliance department with individuals knowledgeable in the area of securities regulation. Although U.S. Bank assigned to its Asset Management Division a two to three person compliance department ("compliance department"), these individuals did not have experience with securities regulations, but rather only had banking regulation experience. Further, these individuals already had responsibility for several other departments within U.S. Bank. No one in the compliance department had experience with securities regulations until 1998. U.S. Bank also did not provide its employees with training that adequately addressed affiliated transactions prohibited under the Investment Company Act.

11. In 1998, the regulation staff sent another deficiency letter to U.S. Bank, noting, among other things, that the Funds were not complying with the Rule 17a-7 securities transactions requirements for exemption from the prohibitions against affiliated transactions in Section 17(a) of the Investment Company Act. Despite this second deficiency letter, U.S. Bank again did not take adequate action to detect and deter potential violations of the federal securities laws.

12. Beginning in 1998, the Funds' sub-adviser completed quarterly compliance reports with respect to which the portfolio managers were to disclose all of the Funds' affiliated principal transactions. The reports were based on, among other things, a questionnaire regarding the Funds' principal transactions of any type with an affiliate. The questionnaire noted generally that such transactions were prohibited and should be immediately reported. Nevertheless, the foreign exchange transactions were not disclosed in response to this questionnaire. The head of U.S. Bank's compliance group responsible for checking the accuracy of the quarterly compliance reports only had training in banking regulation. As a result she did not know that the foreign exchange transactions were prohibited and thought that the reports only required disclosure of affiliated principal *securities* transactions.

13. During the relevant period, U.S. Bank did not provide any type of securities regulation training or manuals to employees of its Foreign Exchange Department or Custodial Department. The employees in these departments received no training on the Investment Company Act's prohibitions against principal affiliated transactions prior to 2001, when the transactions ended.

U.S. Bank's Discovery of the Violations.

14. In September 2001, as a result of a merger between U.S. Bank and Firststar Corporation, a non-affiliate, rather than U.S. Bank, began performing the Funds' foreign exchange transactions. When the transactions ended, U.S. Bank's Foreign Exchange Department Manager tried to re-establish the foreign exchange business with the Funds. He contacted the Chief Operating Officer of U.S. Bank's Asset Management Division ("COO") to see if there was anything that could be done to rekindle the Funds' business. The COO raised a concern that the foreign currency transactions with the Funds were principal trades in violation of Section 17(a) of the Investment Company Act.

15. U.S. Bank thereafter notified the Board of Directors of the Funds to advise them that the Funds may have engaged in prohibited foreign currency transactions with U.S. Bank and advised the Board that it hired an outside law firm to conduct an investigation regarding such transactions. The outside law firm regularly reported the scope of its investigation and its progress to the Board.

16. The outside law firm concluded that U.S. Bank, acting as a principal, had knowingly purchased and sold foreign currency to and from the Funds in violation of Section 17(a) of the Investment Company Act. The law firm engaged a public accounting firm to assist it in determining U.S. Bank's profits resulting from the prohibited transactions with the Funds and to determine whether there was evidence that the Funds had overpaid for the foreign

exchange transactions. Due to limited record keeping by U.S. Bank's Foreign Exchange Department, the public accounting firm was unable to determine U.S. Bank's profits from the foreign exchange transactions with precision. However, the public accounting firm did determine that the Funds may have paid \$636,338 in excess of the Bloomberg high/low composite prices for the foreign currency transactions at issue.

17. A Report of the outside law firm was presented to the Funds' Board in September 2002, summarizing the scope of its inquiry and its findings. In May 2003 the public accounting firm presented its findings to the Funds' Board. At that same time, the outside law firm presented a Final Report to the Audit Committee of the Funds' Board including its recommendation as to an appropriate remedy. Based on recommendations from the outside law firm and the Funds' Board's independent counsel, in May 2003 the Funds' Board approved USBAM's payment of \$636,338 to the Funds.

U.S. Bank Violated Section 17(a) of the Investment Company Act.

18. Sections 17(a)(1) and 17(a)(2) of the Investment Company Act prohibit an affiliated person of a registered investment company, or an affiliated person of such affiliated person, acting as a principal, from knowingly selling to or purchasing from an investment company any security or other property.

19. From April 1994 to May 2001, U.S. Bank was an investment adviser to the Funds and, therefore, an affiliated person of the Funds under Section 2(a)(3)(E) of the Investment Company Act.³ From May 2001 to September 2001, USBAM, its wholly owned subsidiary, replaced U.S. Bank as adviser to the Funds. During that period, under Section 2(a)(3)(A) of the Investment Company Act, U.S. Bank, as 100% owner of USBAM, was an affiliated person of an affiliate of the Funds.

20. As a result of the conduct described above, U.S. Bank willfully violated Section 17(a) of the Investment Company Act.

IV.

Undertakings

U.S. Bank has undertaken to:

1. Maintain a Risk Committee, chaired by U.S. Bank's Chief Risk Officer, which Committee shall have as its members senior executives of U.S. Bank's operating businesses. Within 30 days of entry of the Order, the Risk Committee shall review compliance issues pertaining to federal securities laws relating to prohibited affiliated principal transactions with investment companies throughout the business of U.S. Bank, endeavor to develop solutions to those issues as they may arise from time to time, and oversee implementation of those solutions. The Risk Committee shall provide reports on these compliance matters to the Audit

³ During the relevant period, the Investment Company Act, unlike the Advisers Act, did not exclude banks from its definition of investment adviser. Therefore, as investment adviser to the Funds, U.S. Bank was subject to the provisions of the Investment Company Act.

Committee of the Board of U.S. Bank with such frequency as the Board may instruct, and in any event at least quarterly;

2. Require U.S. Bank's Chief Risk Officer to draft, within 30 days of the Order, an enhanced Code of Ethics, which specifically establishes policies and procedures addressing compliance with all aspects of Section 17(a) of the Investment Company Act;

3. Require that U.S. Bank's Chief Risk Officer, or a member of his staff, at least quarterly, review compliance with the policies and procedures established to address compliance issues under Section 17(a) of Investment Company Act, and that any violations be reported to the President of U.S. Bank and the Risk Committee;

4. Establish and staff a full-time senior-level position whose responsibilities shall include compliance matters related to Section 17(a) of the Investment Company Act. This officer will report directly to the Chief Risk Officer of U.S. Bank;

5. Establish a comprehensive ethics and compliance training program designed to minimize the possibility of future violations of Section 17(a) of the Investment Company Act by U.S. Bank and its employees;

6. Retain, within 30 days of entry of the Order, an independent consultant not unacceptable to the Commission Staff, at U.S. Bank's cost. U.S. Bank shall retain the Independent Consultant to conduct a comprehensive review of U.S. Bank's supervisory, compliance, and other policies and procedures designed to prevent and detect violations of Section 17(a) of the Investment Company Act by U.S. Bank and its employees. This review shall not be limited to foreign currency transactions with the Funds, but shall include a review of U.S. Bank's affiliated transactions with any investment company, a review of U.S. Bank's ethics and compliance training program regarding Section 17(a) of the Investment Company Act, and a review of U.S. Bank's ability to internally detect and deter future violations of Section 17(a) of the Investment Company Act. U.S. Bank shall cooperate with the Independent Consultant in all respects, including staff support, and shall compensate the Independent Consultant, and staff, if one is necessary, at reasonable and customary rates. Once retained, U.S. Bank shall not terminate the relationship with the Independent Consultant without the Commission Staff's approval;

7. Further retain the Independent Consultant to, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of this Order, submit to U.S. Bank and to the Commission's Staff an Initial Report. The Initial Report shall address, at a minimum, the adequacy of the training, policies, and procedures designed to prevent and detect violations of Section 17(a) of the Investment Company Act. The Initial Report must include a description of the review performed, the conclusions reached, and the Independent Consultant's recommendations for modifications and additions to the policies and procedures devised and implemented by U.S. Bank. U.S. Bank shall adopt the recommendations in the Initial Report within 120 days of its receipt;

8. Further retain the Independent Consultant to conduct a follow up review and submit a written Final Report to U.S. Bank and to the Commission's Staff no later than one

year after the date of entry of this Order. In the Final Report, the Independent Consultant shall address U.S. Bank's compliance with this Order, its implementation of the policies and procedures adopted under this Order and make any further recommendations he or she deems necessary. Within 30 days of its receipt of the Independent Consultant's Final Report, U.S. Bank shall adopt the recommendations contained in the Final Report. For good cause shown and upon receipt of a timely application from the Independent Consultant or U.S. Bank, the Commission's Staff may extend any of the procedural dates set forth above;

9. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with U.S. Bank, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission Staff at the level of Assistant Regional Director or above, enter into any employment, consultant, attorney-client, auditing or other professional relationship with U.S. Bank, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement; and

10. Cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order by undertaking to do the following

- a. Produce, without service of a notice or subpoena, any and all non-privileged documents and other information reasonably requested by the Commission's staff;
- b. Use its best efforts to encourage its employees, officers, or directors to be interviewed by the Commission's staff at such times as the staff reasonably may request;
- c. Use its best efforts to encourage its employees, officers, or directors to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be reasonably requested by the Commission's staff; and
- d. That in connection with any testimony of U.S. Bank to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, U.S. Bank:
(i) agrees that any such notice or subpoena for U.S. Bank's appearance and testimony may be served by regular mail or facsimile transmission on its attorney, Lee Mitau; General Counsel, U.S. Bancorp, 800 Nicollet Mall BC-MN-H23I, Minneapolis, MN, 55402-7020; (ii) agrees that any such notice or subpoena for U.S. Bank's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses U.S. Bank's travel, lodging and

subsistence expenses at the then-prevailing U.S. Government per diem rates; and (iii) consents to personal jurisdiction over U.S. Bank in any United States District Court for purposes of enforcing any such notice or subpoena.

In determining whether to accept U.S. Bank's Offer, the Commission has considered the undertakings set forth in this paragraph 10.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in U.S. Bank's Offer.

Accordingly, pursuant to Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. U.S. Bank shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Investment Company Act;

B. It is further ordered that U.S. Bank shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies U.S. Bank National Association as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Daniel Gregus, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W Jackson Blvd., Suite 900, Chicago, IL 60604; and

C. U.S. Bank shall comply with the undertakings enumerated in Section IV., paragraphs 1-9 above.

By the Commission.

Jonathan G. Katz
Secretary

