

connection with the performance by ABN AMRO (Moscow) of its responsibilities under the agreement to the same extent as if ABN AMRO had itself been required to provide custody services under such agreement.

(ii) A three-party subcustody agreement will be executed by ABN AMRO, AAGC, and ABN AMRO (Moscow). Pursuant to this agreement, ABN AMRO and AAGC will delegate to ABN AMRO (Moscow) such of ABN AMRO and AAGC's duties and obligations as will be necessary to permit ABN AMRO (Moscow) to hold Securities in custody in Russia. The subcustody agreement will explicitly provide that: (x) ABN AMRO (Moscow) is acting as a foreign custodian for Securities that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC, and (y) the U.S. Investment Company or its custodian or subcustodian that has entered into a custody agreement will be entitled to enforce the terms of the subcustody agreement and can seek relief directly against ABN AMRO (Moscow). Further, the subcustody agreement will be governed either by the law of the State of New York or The Netherlands. If the subcustody agreement is governed by the laws of The Netherlands, ABM AMRO shall obtain an opinion of counsel in The Netherlands, opining as to the enforceability of the rights of a third party beneficiary under the laws of The Netherlands.

4. Under any of the agreements described in conditions 2 or 3 of this Application, neither ABM AMRO (Moscow), ABM AMRO, nor AAGC would be liable for any losses that result from: (i) political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities, and (ii) other risks of loss (excluding the bankruptcy or insolvency of ABM AMRO (Moscow)) for which ABM AMRO (Moscow) would not be liable under the rule (e.g., despite the exercise of reasonable care, loss due to acts of God, nuclear incident and the like).

5. ABM AMRO currently satisfies, and will continue to satisfy, the minimum shareholders' equity requirement set forth in subsection rule 17f-5(c)(2)(i).

6. At all times during which a custody arrangement described in condition 3 shall be in effect, AAGC shall be the subject of the Order, which permits any U.S. Investment Company and any custodian or subcustodian for a U.S. Investment Company to maintain Securities in the custody of AAGC.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 96-15806 Filed 6-20-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22020/812-9248]

FIRST FUNDS and First Tennessee Bank National Association; Notice of Application

June 17, 1996.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: FIRST FUNDS (the "Trust") and First Tennessee Bank National Association (the "Bank").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c), 10(f) and 17(b) from sections 10(f) and 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain portfolios of the Trust to purchase Tennessee tax-exempt securities from the Bond Division of the Bank (the "Bond Division") when such securities are underwritten solely by the Bond Division or when the Bond Division is a member of an underwriting syndicate, and from a syndicate manager when such securities are designated as group sales. The order also would permit the portfolios to purchase Tennessee tax-exempt securities from an underwriting syndicate of which the Bond Division is a member in amounts up to the greater of 10% or \$1,000,000, but in no event more than 15%, of a class of an issue, and without limiting the consideration paid by a portfolio in any one offering.

FILING DATES: The application was filed on September 19, 1994 and amended on April 5, 1995, July 19, 1995, March 8, 1996, and May 17, 1996.

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 July 12, 1996, 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. Applicants, FIRST FUNDS, 370 17th Street, Suite 2700, Denver, Colorado 80202, and First Tennessee Bank National Association, 4990 Poplar Avenue, 3rd Floor, Memphis, Tennessee 38117.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Elizabeth G. Osterman, Assistant Director, at (202) 942-0654 (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 at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered as an open-end, diversified, management investment company that currently offers shares in seven series, one of which is the Tennessee Tax-Free Portfolio (the "Portfolio"). The Portfolio invests in Tennessee tax-exempt securities, which are debt securities of the State of Tennessee, its political sub-divisions, authorities, agencies, instrumentalities, and corporations the interest on which is exempt from federal and Tennessee personal income tax.

2. The Bank is a national banking association wholly owned by First Tennessee National Corporation. The Trust Division of the Bank acts as an investment adviser ("Investment Adviser") to the existing portfolios of the Trust and expects to serve as investment adviser to future portfolios (together with the Portfolio, the "Portfolios") established by the Trust.

3. The Bond Division participates in a substantial number of public offerings of Tennessee tax-exempt securities and is the leading underwriter of most types of Tennessee tax-exempt securities based on both dollar volume and number of new issues. From 1991 through 1995, the Bond Division served as underwriter of approximately 29% of the total dollar amount, and approximately 30% of the total number, of new issues of Tennessee tax-exempt securities during those years. Applicants state that, over the past five years, the Bond Division has underwritten as senior manager more than 3.3 times the number of issues underwritten by its nearest competitor. Applicants contend that because the Bond Division participates in new issues of Tennessee tax-exempt

securities more consistently than its competitors, the Bond Division ranked first, over a five-year period, among senior underwriters for Tennessee tax-exempt securities by a wide margin. Applicants also state that the Bond Division is the largest competitive retail dealer in the secondary market for Tennessee tax-exempt securities.

4. Applicants request relief from: (a) section 17(a) to permit the Portfolios to purchase Tennessee tax-exempt securities from the Bond Division when such securities are underwritten solely by the Bond Division; (b) sections 10(f) and 17(a) to permit the Portfolios to purchase Tennessee tax-exempt securities from the Bond Division when the Bond Division is a member of an underwriting syndicate; (c) sections 10(f) and 17(a) to permit the Portfolios to purchase Tennessee tax-exempt securities from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when such sales are designated as "group sales;" (d) section 10(f) to permit the Portfolios to purchase Tennessee tax-exempt securities in reliance on rule 10f-3 in amounts up to the greater of 10% or \$1,000,000, but in no event more than 15%, of a class of an issue (or such other amounts as may be set forth in rule 10f-3(d), as it may be amended and/or redesignated in accordance with the proposed amendments to rule 10f-3 released for public comment by the SEC on March 21, 1996 (the "Proposed Amendments"));¹ and (e) section 10(f) to permit the Portfolios to purchase Tennessee tax-exempt securities from an underwriting syndicate of which the Bond Division is a member without limiting the consideration paid by a Portfolio in any one offering to 3% of the Portfolio's total assets, provided that if the SEC determines to retain paragraph 10f-3(e) when the Proposed Amendments are adopted, applicants will comply with the requirements of rule 10f-3(e) as it may be retained, amended and/or redesignated.

5. Applicants request that the proposed relief apply to all current and future portfolios of the Trust or any other investment company or series thereof organized in the future that are advised by the Bank or a person controlling, controlled by, or under common control with the Bank and that invest or will invest in Tennessee tax-exempt securities. The requested order would not permit principal transactions between the Bond Division and the

Portfolios in other securities or for Tennessee tax-exempt securities sold in the secondary market.

6. Applicants assert that while the national demand for tax-exempt securities has experienced substantial growth, the supply of tax-exempt securities has decreased, and Tennessee has experienced an even greater decline in supply of tax-exempt securities than the nation as a whole. Moreover, the quantity and quality of Tennessee tax-exempt securities offered for sale in the secondary market tends to fluctuate daily. Applicants assert that, as the Portfolios increase in size the combined effect of the lack of access to the Bond Division and the lack of securities in the secondary market may prevent the Portfolios reliably from meeting their investment needs by making purchases in the secondary market. Applicants contend that, in that case, the inability to effect transactions with the Bond Division also may increase to the Portfolios the cost of securities in the secondary market both because dealers other than the Bond Division may not be in a position to offer competitive prices generally, and because those dealers do not have to compete with the Bond Division in effecting transactions involving the Portfolios. Consequently, applicants have an increased need to acquire Tennessee tax-exempt securities in underwritten offerings.

7. Applicants assert that due to the shortage of Tennessee tax-exempt securities, a significant number of new issues are oversubscribed. In the event that an issue is oversubscribed, orders designated as "group orders" are filled before "member orders." Consequently, obtaining Tennessee tax-exempt securities in an oversubscribed offering often requires that a purchaser have the ability to place group orders, since there are not sufficient securities to fill all member orders.

8. A group sale results from a "group order." A group order is an order submitted to an underwriting syndicate which benefits all members of the syndicate according to their percentage participation in the syndicate. A group order may be distinguished from a "designated order," in which the investor designates two or more members of the syndicate to retain that portion of the commission not retained by the syndicate managers, and from a "member order," in which an investor places an order directly with a member of the syndicate who retains that portion of the commission not retained by the syndicate managers.

9. Applicants believe that the current restrictions of rule 10f-3(d) unnecessarily impair the Portfolio's

access to the new issue market. Most offerings of Tennessee tax-exempt securities are not sufficiently large to permit the Portfolios to purchase blocks of securities in reliance on rule 10f-3 in amounts exceeding \$500,000.

Applicants believe that the Proposed Amendments recognize that the percentage limitations in rule 10f-3(d) may be outdated as a result of the increase in the size of investment companies and concentration in the underwriting industry. Applicants assert that over the last fifteen years, inflation similarly has rendered the \$500,000 limit under paragraph (d) obsolete. Applicants assert that the market for odd lots is significantly less liquid than the market for round lots, and the dealer spread for purchasing odd lots is significantly higher. Applicants' proposal would lower the size of a class of an offering necessary to allow the Portfolios to purchase blocks large enough to resell as round lots.

10. All of the transactions conducted under the requested order will comply with the provisions of rule 10f-3, other than paragraphs (d), (e), and (f). The Portfolios, together with all other entities for which the Bank and persons controlling, controlled by, or under common control with the Bank have investment discretion ("Related Purchasers") will not in the aggregate purchase a majority of any class of an issue of Tennessee tax-exempt securities when the Portfolios purchase such securities directly from the Bond Division or when the Portfolios purchase securities designated as "group sales" from a syndicate manager of an underlying syndicate of which the Bond Division is a member. This ensures that a majority of the securities of an underwriting may not be purchased by entities controlled by the Bank. Applicants assert that the existence of an independent market for securities purchased by the Portfolios in reliance on the requested order will eliminate any possible incentive to the Bank to misprice securities intentionally in hoped of selling to a captive market. Applicants also state that, unlike other types of debt instruments and equity securities, municipal bonds are primarily sold on the basis of yield. The yield on a particular municipal bond is determined by reference to a number of relatively objective factors, including the credit of the issuer, the maturity of the issue, the general level of interest rates, and the value of any tax-exemption to investors. Because issuers, underwriters, and purchasers can look to these objective factors in determining

¹ Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838 (Mar. 21, 1996).

an appropriate price for an issue of municipal securities, applicants believe that the likelihood that an issue of high quality municipal securities would be unmarketable is minimal.

Applicants' Legal Analysis

1. Section 2(a)(3) defines the term "affiliated person" of another person to include "any person directly or indirectly controlling, controlled by or under common control with, such other person," and "if such other person is an investment company, any investment adviser thereof." Under that definition, the Bank is an affiliated person of the Portfolios because the Bank serves (through the Trust Division) as the Portfolios' investment adviser.

2. Section 10(f) generally prohibits an investment company from purchasing securities from an underwriting syndicate in which the investment company's investment adviser or an affiliate thereof is a member. Section 10(f) therefore prohibits the Portfolios from purchasing any securities from an underwriting syndicate of which the Bond Division is a member. Section 10(f) also authorizes the SEC to exempt any transaction or class of transactions from the prohibitions of section 10(f) if the exemption is consistent with the protection of investors.

3. Rule 10f-3 permits purchases otherwise prohibited by section 10(f) upon compliance with certain conditions, including: paragraph (d), which provides that an investment company, or two or more investment companies with the same investment adviser, relying on rule 10f-3 cannot purchase more than the greater of 4% or \$500,000, but in no event more than 10%, of any class of an issue; paragraph (e), which prohibits an investment company from paying consideration greater than 3% of the investment company's assets for the securities being offered; and paragraph (f), which provides that the investment company cannot purchase the securities being offered directly from its affiliated persons, and that it cannot purchase municipal securities from a syndicate manager if the purchase is designated as a group sale or otherwise allocated to the account of an affiliated person.

4. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company. As a result, the Bond Division is prohibited from selling securities to the Portfolios.

5. Under section 17(b), the SEC may, upon application, exempt a transaction from the prohibition 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 and with the general purposes of the Act. Because section 17(b) exempts only a specific transaction, applicants request relief under sections 6(c) and 17(b) to engage in a series of future transactions.

6. Section 6(c) authorizes the SEC to exempt any person or transaction from any provisions of the Act or any rule or regulation thereunder 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.

7. The SEC has proposed amendments to rule 10f-3 that would, among other things, raise the percentage limitation in rule 10f-3(d) to the greater of 10% of an offering or \$1,000,000 (subject to a maximum limitation of 15% of the offering), eliminate the limitation on the amount of an investment company's assets that may be used to make purchases under the rule, and permit investment companies to purchase municipal securities in group sales. Applicants contend that the Proposed Amendments recognize the fact that (a) rule 10f-3(d) may be too restrictive given the increased size of investment companies relative to the size of underwritten offerings since the rule was last amended, (b) the limitation on the amount of an investment company's assets used to make purchases in a specific offering may be unnecessary in light of the other provisions of rule 10f-3 and the diversification provisions of the Investment Company Act, and (c) permitting group sales may be necessary to ensure that investment companies that purchase municipal bonds are able to purchase securities in oversubscribed offerings in which group orders receive priority. Thus, applicants believe that the Proposed Amendments generally support their request for relief.

8. Given the role of the Bond Division in the new issue market for Tennessee tax-exempt securities, applicants believe that as the Portfolios increase in size they will be disadvantaged in their attempt to obtain a sufficient quantity of Tennessee tax-exempt securities suitable for investment by the Portfolios. Applicants believe that the requested order will benefit the shareholders of the Portfolios by providing the

Portfolios access to the new issue market for Tennessee Tax-exempt securities needed to insure the availability of suitable portfolio securities. Applicants' request is based upon the requirements of the Portfolios with respect to portfolio transactions; anticipated shortages of Tennessee tax-exempt securities; the significant role the Bond Division plays in the market for Tennessee tax-exempt securities; and the advantages to the Portfolios in being able to purchase slightly larger blocks of an underwritten issue than currently is permitting by the limitations of rule 10f-3(d), effect transactions with the Bond Division as principal in the new issue market, and purchase securities in group sales from the manager of underwriting syndicates of which the Bond Division is a member.

9. Applicants believes that the procedures to be followed with respect to the proposed transactions are structured in such a way as to insure that such transactions will be reasonable and fair and will not involve overreaching on the part of any person concerned and that the requested relief is 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' Conditions

Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief:

1. Transactions effected pursuant to the order will be effected in accordance with all of the provisions of rule 10f-3 (other than paragraphs (d), (e), and (f)). A Portfolio, or two or more Portfolios and/or other investment companies with the same investment adviser as the Portfolios, will not in the aggregate purchase more than the greater of 10% or \$1,000,000, but in no event more than 15% of any class of an issue of Tennessee tax-exempt securities when the Portfolios purchase such securities directly from the Bond Division, when the Portfolios purchase such securities in "group sales" from a syndicate manager of an underwriting syndicate of which the Bond Division is a member, or when the Portfolios and/or the other investment companies purchase such securities otherwise in reliance on rule 10f-3. Notwithstanding the foregoing, the aggregate amount of securities that may be purchased and the amount of the Portfolio's assets that may be used will be limited to the percentage restrictions set forth in rule 10f-3, as it may be amended if the Proposed Amendments are adopted, to the extent such percentage restrictions vary from

those provided in this condition. In no event will the Portfolios purchase any such securities from the Bond Division or from the syndicate manager of an underwriting syndicate of which the Bond Division is a member in "group sales" in an underwriting where the Related Purchasers in the aggregate purchase a majority or more of any class of an issue of such securities.

2. Purchases of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" be effected only in Tennessee tax-exempt securities which at the time of purchase have one of the following investment grade ratings from at least one nationally recognized rating agency: (a) one of the two highest investment grade ratings in the case of securities with remaining maturities of one year or less; and (b) one of the top three investment grade ratings in the case of securities with remaining maturities greater than one year.

3. Purchases of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" will be limited so that no such transaction will be effected if, as a result, the aggregate value of securities held by a Portfolio acquired pursuant to such transactions would exceed 50% of the total net assets of the Portfolio.

4. Purchases of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" will be effected only when the Tennessee tax-exempt securities acquired are otherwise unavailable for purchase. If the Bond Division is the sole underwriter of the securities, this condition is automatically fulfilled because there is no other potential seller. When the Bond Division is a member of an underwriting syndicate, the Investment Adviser will observe the following procedures to determine when the securities are unavailable from other members of the syndicate. Initially, the Investment Adviser will determine the aggregate number of securities which the Portfolios wish to acquire. Next, the Investment Adviser will attempt to purchase as much of this number as possible from members of the syndicate other than the Bond Division. After acquiring as many securities as possible from such other members, the Investment Adviser will attempt to

purchase from the Bond Division the number of securities which the Portfolios wish to acquire and have been unable to obtain from such other members. The securities acquired from such other members will be allocated first to the Portfolios to the extent of the number of securities it is entitled to acquire, based upon the relative needs of the Related Purchasers and the total number of securities purchased from such other members and from the Bond Division, whichever is less.

5. When the Portfolios purchase Tennessee tax-exempt securities from a syndicate manager of an underwriting syndicate of which the Bond Division is a member, the Portfolios will not: (a) Submit designated orders to a syndicate manager which are allocated to the Bond Division; (b) submit group orders to a syndicate manager which designate the Bond Division to receive any portion of the commission; or (c) otherwise allocate orders to the Bond Division.

6. The exemption will be valid only so long as the Investment Adviser and the Bond Division operate as separate and independent profit centers within the framework of First Tennessee Bank National Association (or become separate subsidiaries or affiliates thereof). The Investment Adviser will maintain offices physically separate from those of the Bond Division. Personnel assigned to the Investment Adviser will be devoted exclusively to the business and affairs of the Investment Adviser and will not receive compensation based on the volume or nature of transactions effected for the Portfolios with the Bond Division or an underwriting syndicate of which the Bond Division is a member, except to the extent that such transactions may affect the profits and losses of the Bank. The Bond Division will not share with the Investment Adviser any of its profits or losses on transactions effected by the Portfolios with the Bond Division or an underwriting syndicate of which the Bond Division is a member, provided that general compensation to the officers and employees of the Bank, including the Investment Adviser and the Bond Division, will not be affected by this undertaking. Personnel assigned to the Bond Division will not participate in or otherwise seek to influence the Investment Adviser other than in the normal course of sales activities of the same nature that are being carried out simultaneously with respect to unaffiliated institutional clients of the Bond Division. Senior executives of the Bank and/or First Tennessee National Corporation with responsibility for overseeing the operations of various divisions and subsidiaries are not

precluded from exercising those functions over the Investment Adviser because they oversee the Bond Division as well, provided that such persons shall not have any involvement with respect to transactions effected pursuant to the exemption and will not attempt to influence or control the purchase of securities by the Portfolios from the Bond Division or an underwriting syndicate of which the Bond Division is a member.

7. The Bond Division and the Investment Adviser will adopt a set of guidelines for their respective personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the application and that the parties generally maintain arm's length relationships. Compliance officer(s) in conjunction with the Bank's audit division periodically will monitor the activities of the Bond Division and the Investment Adviser to make certain that they adhere to such guidelines and the conditions set forth in the application.

8. The trustees, including a majority of the independent trustees of the Trust who are not "interested persons" of the Trust and have no direct or indirect financial interest in the transaction, will review no less frequently than quarterly each purchase of Tennessee tax-exempt securities directly from the Bond Division or from a syndicate manager of an underwriting syndicate of which the Bond Division is a member when the purchases are designated as "group sales" since the last review and will determine that the terms of such transactions were reasonable and fair to the shareholders of the Portfolios and did not involve overreaching of the Portfolios or their shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 96-15909 Filed 6-20-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22021; 813-146]

George K. Baum Employee Equity Fund, L.P.; Notice of Application

June 17, 1996.

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