

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

Margaret H. McFarland,  
*Deputy Secretary.*

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**[Investment Company Act Release No. 22211; 812-10152]**

**LifeUSA Funds, Inc., et al.; Notice of Application**

September 10, 1996.

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

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** LifeUSA Funds, Inc. ("LUSA Fund"), IAI Investment Funds I, Inc., IAI Investment Funds II, Inc., IAI Investment Funds III, Inc., IAI Investment Funds IV, Inc., IAI Investment Funds V, Inc., IAI Investment Funds VI, Inc., IAI Investment Funds VII, Inc., IAI Investment Funds VIII, Inc. (the IAI Investment Funds I through VIII collectively, "Underlying Funds"), Investment Advisers Inc. ("IAI"), and IAI International Limited.

**RELEVANT ACT SECTION:** Order requested under section 6(c) of the Act from section 12(d)(1) and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit LUSA Fund to invest substantially all of its assets in the securities of certain affiliated investment companies in excess of the limits of Section 12(d)(1) of the Act.

**FILING DATE:** The application was filed on May 15, 1996, and amended on July 31, 1996, and August 14, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1996, and should be accompanied by proof of service on the applicant, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: 3700 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402.

**FOR FURTHER INFORMATION CONTACT:** Mercer E. Bullard, Branch Chief, at (202) 942-0564, or Elizabeth G. Osterman, Assistant Director, 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.

**Applicants' Representations**

1. LUSA Fund is a Minnesota corporation that will register as an open-end management investment company under the Act. LUSA Fund will be authorized to issue its shares in more than one series, each of which will pursue a distinct set of investment objectives by investing substantially all of its assets in shares of certain portfolios of the Underlying Funds ("Underlying Portfolios"). LUSA Fund will consist initially of four portfolios: the Aggressive Growth Portfolio, the High Growth Portfolio, the Moderate Growth Portfolio, and the Conservative Growth Portfolio (the "LUSA Portfolios").

2. IAI is a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). IAI also is registered as a transfer agent under the Securities Exchange Act of 1934. IAI is the investment adviser and transfer agent for the Underlying Funds. IAI will serve as investment adviser and transfer agent to LUSA Fund. IAI will also serve as investment adviser, provide overall management, transfer agency, dividend disbursement and investor services to the LUSA Portfolios and the Underlying Portfolios.

3. IAI International is a registered investment adviser under the Advisers Act. IAI International is the subadviser to the Underlying Portfolios of IAI Investment Funds III, Inc.

4. Applicants propose a "fund of funds" arrangement whereby LUSA Fund will register for sale its shares under the Securities Exchange Act of 1933, and the LUSA Portfolios will invest substantially all of their assets in shares of the Underlying Funds that are part of the same "group of investment companies" as defined in rule 11a-3 of the Act. In addition, investments may be

made in money market instruments for temporary defensive purposes and to maintain liquidity.

5. Each LUSA Portfolios will allocate its assets among one or more Underlying Portfolios consistent with its investment objective. IAI, as investment adviser to the LUSA Portfolios, will allocate each Portfolio's assets among the Underlying Portfolios in accordance with quantitative and fundamental analyses of current market and economic conditions.

6. IAI will not initially charge the LUSA Portfolios an advisory fee, although it may do so in the future. IAI may charge the LUSA Portfolios for all other services relating to the operation of the LUSA Portfolios. In addition, LUSA Portfolio shareholders will indirectly pay their proportionate share of Underlying Portfolio advisory fees and expenses. Further, LUSA Portfolio shares may be subject to sales charges including front-end and deferred sales charges, redemption fees, service fees and 12b-1 fees. Initially, LUSA Portfolios will be subject to a front-end sales charge and distribution fees.

7. Applicants believe that LUSA Fund will provide investors with a simple and effective means of structuring a diversified mutual fund investment program suited to their general needs.

**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 such 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 such securities, together with the securities of any 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 would cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale would cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt any person or transaction if 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. Applicants request an order under section 6(c) exempting them from sections 12(d)(1)(A) and (B) to the extent necessary to permit LUSA Fund to

acquire shares of the Underlying Funds and to permit each Underlying Fund to sell shares to LUSA Fund. Applicants request that any relief granted pursuant to the application also apply to any future LUSA Portfolio, and any Underlying Fund or open-end management investment company or series thereof that is or will be part of the same "group of investment companies" as LUSA Fund (as defined in rule 11a-3 under the Act), subject to the terms and conditions of the application. For the reasons discussed below, applicants believe it is appropriate for the SEC to exercise its authority under section 6(c) to grant the requested exemptions.

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses that might arise when an investment company acquires shares of another investment company, including unnecessary duplication of costs (such as sales loads, advisory fees and administrative costs), undue influence by a fund holding company over its underlying funds, the threat of large scale redemptions of the securities of the underlying investment companies, and unnecessary complexity.

4. Applicants believe relief from section 12(d)(1) is appropriate because none of these potential or actual abuses are present in the proposed fund of funds structure. Applicants state that, with respect to advisory fees, the directors of LUSA Fund, before approving advisory fees, will find that any advisory fees charged under an advisory contract are based upon services provided that are in addition to, rather than duplicative of, services provided under any underlying portfolio advisory contract.

5. Applicants state that because any sales charges or service fees relating to the shares of LUSA Fund will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealer's ("NASD") Conduct Rules when aggregated with any sales charges or service fees that LUSA Fund pays relating to its acquisition, holding, or disposition of Underlying Fund shares, the proposed structure will not raise the sales charge layering concerns underlying section 12(d)(1).

6. Applicants note that, although administrative and other fees may be charged at both the LUSA Fund and Underlying Portfolio levels, overall, administrative and other expenses may be reduced at both levels under the proposed arrangement.

7. Applicants also state that there is little risk that IAI will exercise inappropriate control over the Underlying Funds. Applicants believe

that because IAI is the investment adviser to the Underlying Funds and because LUSA Fund will only acquire shares of Underlying Funds, a redemption from one Underlying Fund will simply lead to the investment of the proceeds in another Underlying Fund.

8. No LUSA Portfolio will invest in any Underlying Portfolio unless the Underlying Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company. The exception for securities received as a dividend or as a result of a plan of reorganization is based on section 12(d)(1)(D). Section 12(d)(1)(D) permits an investment company to exceed the limits contained in section 12(d)(1)(A) in the event that the investment company exceeds the limits because it acquires investment company shares as a dividend, as a result of an offer of exchange, or pursuant to a plan of reorganization (other than a plan devised for the purpose of evading section 12(d)(1)(A)). No Underlying Portfolio will participate in any plan of reorganization devised for the purpose of evading the provisions of section 12(d)(1)(A).

9. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Section 17(b) of the Act authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Because LUSA Fund and the Underlying Funds are advised by IAI, LUSA Fund and the Underlying Funds could be deemed to be affiliates of one another. Accordingly, purchases by LUSA Fund of the shares of the Underlying Funds, and the sale by the Underlying Funds of their shares to LUSA Fund could be deemed to be principal transactions between affiliated persons under section 17(a).

Accordingly, applicants request an exemption under sections 17(b) and 6(c) from the prohibitions of section 17(a).<sup>1</sup>

<sup>1</sup> Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c) frequently

10. Applicants believe that relief is appropriate because the consideration paid for the sale and redemption of shares of the Underlying Portfolios is fair and reasonable in that it will be based upon the net asset values of the Underlying Portfolios, and the investment of assets of the LUSA Portfolios in shares of the Underlying Portfolios will be effected in accordance with the investment restrictions and policies of each LUSA Portfolio. Applicants also believe that the proposed arrangement is consistent with the purposes of the Act.

#### Applicants' Conditions

Applicants will comply with the following procedures as conditions to any SEC order:

1. LUSA Fund and each Underlying Portfolio will be part of the same "group of investment companies" as defined in rule 11a-3 of the Act.

2. LUSA Fund will not invest in any Underlying Portfolio unless the Underlying Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company.

3. At least a majority of LUSA Fund's directors will not be "interested persons" as defined in section 2(a)(19) of the Act.

4. Any sales charge or service fees charged with respect to shares of LUSA Fund, when aggregated with any sales charges or service fees paid by LUSA Fund relating to its acquisition, holding or disposition of shares of the Underlying Portfolio, shall not exceed the limits set forth in rule 2830 of the NASD's Conduct Rules.

5. Prior to approving any advisory contract under section 15 of the Act, the board of directors of LUSA Fund, including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under such contract, if any, are based on services that are in addition to, rather than duplicative of, the services provided under any Underlying Portfolios advisory contract. These findings and their bases will be recorded fully in the minute books of LUSA Fund.

6. Applicants will provide the following information in electronic format to the Chief Financial Analyst of the SEC's Division of Investment

is used, along with section 17(b), to grant relief from section 17(a) to permit an ongoing series of future transactions.

Management as soon as reasonably practicable following the fiscal year-end of each LUSA Portfolio, unless the chief Financial Analyst notifies applicants that the information need no longer be submitted: (a) Monthly average total assets for each LUSA Portfolio and each Underlying Portfolios; (b) monthly purchase and redemptions (other than by exchange) for each LUSA Portfolio and each Underlying Portfolio; (c) monthly exchanges into and out of each LUSA Portfolio and each Underlying Portfolio; (d) month-end allocations of each LUSA Portfolio's assets among the Underlying Portfolios; (e) annual expense ratios for each LUSA Portfolio and each Underlying Portfolio; and (f) a description of any vote taken by the shareholders of any Underlying Portfolio, including a statement of the percentage of votes cast for and against the proposal by LUSA Fund and by the other shareholders of that Underlying Portfolio.

For the SEC, by the Division of Investment Management, Under delegated authority.  
Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-23703 Filed 9-16-96; 8:45 am]

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[Rel. No. IC-22216; File No. 812-9994]

### **Transamerica Occidental Life Insurance Company, et al.**

September 11, 1996.

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

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Transamerica Occidental Life Insurance Company ("Transamerica"), Transamerica Occidental's Separate Account Fund C ("Old Account"), Transamerica Variable Insurance Fund, Inc. ("Fund"), Transamerica Securities Sales Corporation ("TSSC"), and Transamerica Occidental Separate Account C ("New Account").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 17(b) of the 1940 Act granting exemptions from the provisions of Section 17(a) thereof, and under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applications seek an order: (1) exempting Transamerica, the Old Account and the Fund from the provision of Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act, to the

extent necessary to permit the transfer of the securities and other instruments ("portfolio investments") held by the Old Account to the Growth Portfolio of the Fund in exchange for shares of the Growth Portfolio of the Fund; and (2) exempting Transamerica, TSSC, the New Account, as restructured into a unit investment trust following the transfer of the Old Account's portfolio investments to the Growth Portfolio, and certain principal underwriters other than TSSC ("Future Underwriters") from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, pursuant to Section 6(c) of the 1940 Act, to the extent necessary to permit the deduction of a mortality and expense risk charge from the New Account under certain variable annuity contracts. **FILING DATE:** The application was filed on February 14, 1996, and amended on August 8, 1996.

**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 Secretary of the Commission 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 October 7, 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Regina M. Fink, Esq., Transamerica Occidental Life Insurance Company, 1150 South Olive Street, Los Angeles, California 90015.

**FOR FURTHER INFORMATION CONTACT:** Mark C. Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, 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 Commission.

#### **Applicants' Representations**

1. Transamerica, a wholly-owned subsidiary of the Transamerica Corporation, is a stock life insurance company incorporated in California. Transamerica is the depositor of the Old Account and will become the depositor of the New Account pursuant to the

proposed transactions and associated restructuring of the Old Account (the "Reorganization").

2. The Old Account was established by Transamerica as a separate investment account to fund three non-qualified variable annuity contracts ("Contracts"). The Old Account meets the definition of a "separate account" under the 1940 Act and is registered under the 1940 Act as an open-end management investment company. The Old Account consists of a single portfolio of primarily equity securities. The investment objective of the Old Account is long-term capital growth. Transamerica is the investment adviser for the Old Account. Transamerica has contracted with Transamerica Investment Services, Inc., a wholly-owned subsidiary of Transamerica Corporation, to act as the Old Account's sub-adviser.

3. The Fund is registered open-end, diversified management investment company, established as a Maryland corporation on June 23, 1995. A registration statement on Form N-1A was filed with the Commission on November 3, 1995. The Fund currently consists of one investment portfolio: the Growth Portfolio ("Portfolio"). Additional portfolios may be created from time to time. The Fund initially will offer its shares solely to the New Account as a funding vehicle for the variable annuity contracts supported by the New Account. In the future, the Fund may offer its shares to other insurance company separate accounts supporting other variable annuity or variable life insurance contracts and to qualified pension and retirement plans.

4. The investment objective of the Growth Portfolio is long-term capital growth. Pursuant to an investment advisory agreement and subject to the authority of the Fund's Board of Directors, Transamerica will serve as the Portfolio's investment adviser and will engage Transamerica Investment Services, Inc. to serve as the Fund's sub-adviser.

5. As part of the Reorganization, TSSC, a wholly-owned subsidiary of Transamerica Insurance Corporation of California, which is a wholly-owned subsidiary of Transamerica Corporation, will replace Transamerica Financial Resources, Inc. as the principal underwriter for the Contracts. Future Underwriters also may serve as distributors and principal underwriter for the Contracts. Any such Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and will be a member of the National Association of Securities Dealers, Inc.