

5. On August 31, 1996, there were 132.93 shares of applicant outstanding, with an aggregate net asset value of \$2,056.66 and a net asset value per share of \$15.47. On September 3, 1996, applicant paid an income dividend in cash to its shareholders in the amount of \$1,898.03, or approximately \$17.37 per share. On September 23, 1996, applicant's two remaining shareholders unanimously approved the dissolution of applicant by written consent. All of applicant's shareholders voluntarily redeemed their shares and final redemption occurred on September 27, 1996. On this date, the net asset value of applicant was \$15.47 per share.

6. The expenses incurred and to be incurred in connection with the liquidation are estimated to be \$14,500. To the extent that these expenses and other expenses of applicant resulted in the expense ratio of applicant exceeding 2.80%, the expenses were paid by Charter Capital Management, Inc., applicant's investment adviser. Since the expense ratio exceeded the foregoing percentage during the liquidation period, all present and future liquidation expenses will be paid by Charter Capital Management, Inc.

7. Applicant has no securityholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. On September 27, 1996, applicant filed Articles of Dissolution with the State of Wisconsin.

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

[FR Doc. 97-5674 Filed 3-6-97; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 22537; 812-10428]

### First American Investment Funds, Inc., et al.; Notice of Application

March 3, 1997.

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

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

**APPLICANTS:** First American Investment Funds, Inc. ("FAIF"), First American Funds, Inc. ("FAF"), First American Strategy Funds, Inc. ("FASF"), each existing and future series of FAIF, FAF, FASF, and existing and future registered

investment companies or series thereof that, now or in the future, are advised by First Bank National Association (collectively, the "Companies"); and First Bank National Association ("First Bank").

**RELEVANT ACT SECTION:** Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

#### SUMMARY OF THE APPLICATION:

Applicants request an order to permit certain investment companies to deposit their uninvested cash balances and their cash collateral in one or more joint accounts to be used to enter into short-term investments.

**FILING DATES:** The application was filed on November 15, 1996 and amended on February 26, 1997. By letter dated February 28, 1997, applicants have agreed to file an additional amendment during the notice period, the substance of which is incorporated herein.

**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 March 27, 1997, 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 c/o James D. Alt, esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, Minnesota 55402.

**FOR FURTHER INFORMATION CONTACT:** Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (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 at the SEC's Public Reference Branch.

#### Applicants' Representations

1. FAIF and FAF are registered under the Act as open-end management investment companies and are incorporated under the laws of the States of Maryland and Minnesota, respectively. FAIF currently offers twenty series with varying objectives

and policies. FAF currently offers three series, each of which is a money market fund subject to the requirements of rule 2a-7 under the Act.

2. FASF, organized under Minnesota law, is registered under the Act as an open-end management investment company. FASF is comprised of four series and operates as a "fund of funds," the principal investments of which are shares of certain series of FAIF and FAF.<sup>1</sup>

3. First Bank,<sup>2</sup> a national banking association, serves as investment adviser for each of the existing Companies, subject to general oversight of the boards of directors of the Companies (each a "Board" and collectively, the "Boards"). First Bank is a wholly owned subsidiary of First Bank System, Inc. ("FBS"), a bank holding company. First Bank has engaged a sub-adviser for FAIF's International Fund, Marvin & Palmer Associates, Inc., which is not affiliated with First Bank or any affiliates of First Bank.

4. All of the Funds are currently authorized by their investment policies and restrictions to invest at least a portion of their uninvested cash balances in short-term liquid assets including repurchase agreements, rated commercial paper, U.S. government securities, and other short-term debt. Each of the Funds also may invest cash balances in those Funds which hold themselves out as money market funds.<sup>3</sup>

5. Several of the Funds are authorized to engage in securities lending transactions. In connection with such transactions, such Funds may receive collateral in the form of either cash ("Cash Collateral") or securities. When Cash Collateral is received, it is expected to be invested in a manner consistent with customary securities lending practices.

6. First Trust National Association ("First Trust"), a wholly-owned subsidiary of FBS, serves as custodian for the assets of each of the Funds. First Trust also may act as securities lending agent ("Securities Lending Agent") for

<sup>1</sup> See *First American Strategy Funds, Inc.*, Investment Company Act Release Nos. 22173 (Aug. 26, 1996) (notice) and 22245 (Sept. 24, 1996) (order).

<sup>2</sup> The term "First Bank" includes any other entity controlling, controlled by or under common control with First Bank that acts in the future as investment adviser for the Companies or other investment companies and intends to rely on any order issued by the Commission in connection with the application.

<sup>3</sup> See *First American Investment Funds, Inc.*, Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

the Fund's securities lending transactions.<sup>4</sup>

7. Applicants propose to deposit uninvested: (a) Cash balances of the Funds that remain at the end of the trading day, (b) cash for investment purposes, and/or (c) Cash Collateral into one or more joint accounts (the "Joint Accounts") established at the Funds' custodian. The Funds that are eligible to participate in a Joint Account and that elect to participate in a Joint Account are referred to herein collectively as "Participants."

8. The daily balance of the Joint Accounts will be invested in the following short-term investments: (a) Repurchase agreements "collateralized fully" as defined in rule 2a-7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute "Eligible Securities" (as defined in rule 2a-7 under the Act) (collectively, "Short-Term Investments").

9. A Participant's decision to use a Joint Account would be based on the same factors as its decision to make any other short-term liquid investment. The sole purpose of the Joint Accounts would be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for some or all Participants necessary to manage their respective daily account balances.

10. First Bank would be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts in accordance with the procedures discussed below, and ensuring fair treatment of Participants. First Bank would manage investments in the Joint Accounts in essentially the same manner as if it had invested in such instruments on an individual basis for each Participant. In addition, all purchases through the Joint Accounts will comply with all present and future SEC staff positions relating to the investment of cash collateral in connection with securities lending activities.

11. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of the Investment Company Act Release No. 13005 (February 2, 1983).<sup>5</sup> Applicant's

acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and represent that repurchase agreement transactions would comply with future positions of the Commission to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the Commission sets forth guidelines with respect to other Short-term Investments, all such investments made through the Joint Accounts would comply with those guidelines.

#### Applicants' Legal Analysis

1. Section 17(d) and rule 17d-1 thereunder prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order. Applicants believe that granting the requested order is consistent with the provisions, policies, and purposes of the Act, and that the Funds would participate in the Joint Accounts on a basis no different from or less advantageous than that of any other Participant.

2. The Participants, by participating in the proposed Joint Accounts, and First Bank, by managing the proposed Joint Accounts, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d-1 under the Act.

3. Applicants state that the Participants may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and other Short-Term Investments that is higher than the rate available on smaller repurchase agreements and other Short-Term Investments. The Joint Accounts also may increase the number of dealers and issuers willing to enter into Short-Term Investments with such Participants.

4. Applicants assert that no Participant would be in a less favorable position as a result of participating in the Joint Accounts. Applicants believe that each Participant's investment in a Joint Account would not be subject to

subject to the agreement) only if cash is received very late in the business day and otherwise would be unavailable for investment.

the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, or any other Participant. Each Participant's liability on any Short-Term Investment would be limited to its interest in such investment; no Participant would be jointly liable for the investments of any other Participant.

5. Applicants state that the Joint Accounts may result in certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the counterparties to the transactions and the Participant's custodian and administrator.

6. Applicants represent that the proposed operation of the Joint Accounts would not result in any conflicts of interest between any of the Participants or First Bank. In making investments for the Joint Accounts, First Bank will be obligated to take into account each Participant's investment objective, policies, and restrictions; its obligation to fairly allocate investment opportunities among Participants; the need for diversification; and the time that cash becomes available for investment.

7. The Boards will have determined, prior to participation by any Fund, that the procedures for operating a Joint Account are reasonably designed to ensure: (a) That the Joint Account is not inherently biased in favor of one Participant over another and should eliminate any bias due to size or lack thereof in any transaction; and (b) that the anticipated benefits to each Participant would be within an acceptable range of fairness.

8. For the reasons set forth above, applicants believe that the Funds' participation in the proposed Joint Accounts is consistent with the provisions, policies and purposes of the Act, and that the granting of the requested order would meet the criteria set forth in rule 17d-1.

#### Applicants' Conditions

Applicants would comply with the following as conditions to any order granted by the SEC:

1. The Joint Accounts would not be distinguishable from any other accounts maintained by Participants at their custodian, except that monies from Participants will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily

<sup>4</sup> See *First American Investment Funds, Inc.*, Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

<sup>5</sup> Repurchase agreements will be entered into on a "hold-in-custody" basis (i.e., where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral

management of uninvested cash balances.

2. Cash in the Joint Accounts would be invested in one or more of the following, as directed by First Bank (or, in the case of Cash Collateral, the Securities Lending Agent): (a) Repurchase agreements "collateralized fully" as defined in Rule 2a-7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute "Eligible Securities" (as defined in rule 2a-7 under the Act). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a-7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments which have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a-7 under the Act.

3. All assets held in the Joint Accounts would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. Each Participant valuing its net assets in reliance on rule 2a-7 under the Act will use the average maturity of the instruments in the Joint Accounts in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to assure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Account, including interest payable on such assets in the Joint Account.

6. First Bank would administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under its existing or

any future investment advisory or sub-advisory agreements with Participants and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of the Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder.

8. Each Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, each Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Participants in that investment.

10. First Bank and the custodian of each Participant will maintain records documenting, for any given day, each Participant's aggregate investment in a Joint Account and each Participant's pro rata share of each investment made through such Joint Account. The records maintained for each Participant shall be maintained in conformity with section 31 of the Act and the rules and regulations thereunder.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) First Bank believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Participants in the investment because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterpart defaults. First Bank may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to

have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a-7 under the Act, would be considered illiquid and would be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, if First Bank cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

13. Not every Participant participating in the Joint Accounts will necessarily have its cash invested in every Joint Account. However, to the extent a Participant's cash is applied to a particular Joint Account, the Participant will participate in and own a proportionate share of the investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such investment in such Joint Account purchased with monies contributed by the Participant.

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

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-5675 Filed 3-6-97; 8:45 am]

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[Release No. 34-38350; File No. SR-NSCC-96-20]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Revise Rules**

February 27, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, notice is hereby given that on November 14, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).