

agree that all such records will be subject to examination by the Commission and its staff.

3. The General Partner and any general partner of any subsequent KECALP Partnership will send to each limited partner of such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the KECALP Partnership's independent accountants. At the end of each fiscal year, the General Partner and the general partner of each subsequent KECALP partnership will make a valuation or have a valuation made of all of the assets of such Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the KECALP Partnership. In addition within 90 days after the end of each fiscal year of each KECALP Partnership or as soon as practicable thereafter, the general partner of such KECALP Partnership will send a report to each person who was a partner at any time during the fiscal year, then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his or its Federal and state income tax returns and a report of investment activities of such Partnership during the year.

4. If purchases or sales are made by a KECALP Partnership from or to an entity affiliated with the KECALP Partnership by reason of a 5% or more investment in such entity by any director, officer or employee of ML & Co. and its subsidiaries, by any director, officer of the general partner of that KECALP Partnership, such individual will not participate in that general partner's determination of whether or not to effect such purchase or sale.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-11740 Filed 5-5-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22649; 812-10564]

### New USA Mutual Funds, Inc., et al.; Notice of Application

April 30, 1997.

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

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

**APPLICANTS:** New USA Mutual Funds, Inc. ("New USA Co.") on behalf of its series, New USA Growth Fund; New USA Research & Management Co. ("NURM"); O'Neil Data Systems, Inc. ("ODS"); and MFS Series Trust II ("MFS Series II"), on behalf of its series, MFS Emerging Growth Fund ("MFS Growth Fund").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

**SUMMARY OF APPLICATION:** Applicants request an exemption from section 15(f)(1)(A) to permit ODS to sell its interest in NURM, the investment manager of the New USA Growth Fund, a series offered by New USA Co., to MFS. Without the requested exemption, MFS Series II would have to reconstitute its boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

**FILING DATES:** The application was filed on March 11, 1997.

**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 May 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: New USA Mutual Funds, Inc., New USA Research & Management Co., and O'Neil Data Systems, Inc., 12655 Beatrice Street, Los Angeles, California 90066; and MFS Series Trust II c/o MFS Emerging Growth Fund, 500 Boylston Street, Boston, Massachusetts 02116.

**FOR FURTHER INFORMATION CONTACT:** Mary T. Geffroy, Staff Attorney, at (202) 942-0553, or Mary Kay Frech, Branch Chief, 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.

### Applicant's Representations

1. New USA Co. is an open-end management investment company registered under the Act consisting of one series, the New USA Growth Fund. NURM is the investment manager of the New USA Growth Fund pursuant to an investment management agreement between New USA Co. and NURM (the "Investment Advisory Agreement"). NURM's sole stockholder and parent company is ODS.

2. MFS Series II is an open-end management investment company registered under the Act consisting of four separate series (the "MFS Series II Funds"), including the MFS Growth Fund. The MFS Growth Fund is part of the MFS family of funds, which consists of approximately 50 funds (collectively, the "MFS Funds"). Massachusetts Financial Services Company ("MFS") is the investment adviser to the MFS Growth Fund.

3. MFS Series II proposes to acquire the assets and liabilities of the New USA Growth Fund in exchange for shares of equal aggregate value of the MFS Growth Fund. In connection therewith, MFS will acquire all of the outstanding shares of the stock of NURM from ODS. The foregoing transactions are referred to as the "Transaction."

4. On March 6, 1997, ODS and MFS entered into a Stock Purchase Agreement (the "Purchase Agreement") pursuant to which, and subject to certain conditions, MFS agreed to purchase all of the outstanding capital stock of NURM. The consummation of the Purchase Agreement is subject to, among other things, the approval of the shareholders of the New USA Growth Fund of a plan of reorganization by and between New USA Co., on behalf of the New USA Growth Fund, and MFS Series II, on behalf of the MFS Growth Fund (the "Reorganization Agreement").

5. The MFS Series II board of trustees approved the Reorganization Agreement on December 11, 1996, and the New USA Co. board of directors unanimously approved it on March 4, 1997. The Reorganization Agreement provides for: (a) The acquisition by the MFS Growth Fund of substantially all of the assets and liabilities of the New USA Growth Fund in exchange for shares of the MFS Growth Fund; (b) the distribution of these MFS Growth Fund shares to the shareholders of the New USA Growth Fund in liquidation of the New USA Growth Fund; and (c) New USA Co.'s

liquidation and termination under state law.

6. Applicants request an exemption under section 6(c) of the Act from the provisions of section 15(f)(1)(A) to permit ODS to receive consideration in compliance with section 15(f) in connection with the Transaction, notwithstanding the fact that, after the Transaction, the MFS Growth Fund will have a board of trustees consisting of fewer than 75% disinterested trustees.

#### Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit upon the sale of its business (which results in an assignment of an advisory contract with such company) if certain conditions are met. Section 15(f)(1)(A) requires that, for a period of three years after such a sale, at least 75 percent of the board of the investment company (or its successor, by reorganization or otherwise) may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company.

2. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision 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. Section 15(f)(3)(B) provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A).

3. Applicants state that at February 24, 1997, the New USA Co. had assets of approximately \$203 million, as compared to MFS Series II's assets of approximately \$2.649 billion; therefore, the assets of New USA Co. are approximately 7.7% of the assets of MFS Series II. Thus, the transaction involves an acquisition by an investment company with assets "substantially greater" than the assets of the acquired fund.

4. Applicants assert that it is appropriate for the assets of each investment company, as opposed to each series, to be taken into account when considering the "substantially

greater" test set forth in section 15(f)(3)(B). Applicants contend that any other conclusion would be inconsistent with the literal language of the section, which refers to the sale of assets of one investment company to another "investment company with assets substantially greater in amount." Applicants state that MFS Series II and the New USA Co. are the registered investment companies involved in the transaction and, in fact, the board of trustees of MFS Series II and the board of director of New USA Co. authorized the transaction on behalf of their respective series.

5. The board of directors of New USA Co. and the board of trustees of MFS Series II consist of the following ("Interested Directors" and "Interested Trustees" are directors and trustees who are "interested persons," within the meaning of section 2(a)(19) of the Act, of NURM and MFS, respectively):

Investment company	Number of interested directors/trustees	Number of disinterested directors/trustees	Total
New USA Co	1	4	5
MFS Series	4	7	11

In order to comply with section 15(f)(1)(A) following consummation of the transactions, MFS Series II would have to add five Disinterested Trustees or reduce the number of Interested Trustees from four to two. If MFS Series II were to add five Disinterested Trustees, a vote of it shareholders would be required pursuant to section 16(a) of the Act, which requires that at least two-thirds of a fund's trustees be elected by shareholders. MFS Series II otherwise would not be required to hold a shareholders meeting under Massachusetts law or the Act to consummate the transaction.

6. For the reasons stated above, applicants assert that the requested relief is necessary and appropriate in the public interest, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, as required by section 6(c).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-11742 Filed 5-5-97; 8:45 am]

BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0268]

#### Centura SBIC, Inc.; Issuance of a Small Business Investment Company License

On March 21, 1996, an application was filed by Centura SBIC, Inc., 200 Queens Road, Suite 100, Charlotte, North Carolina, with the Small Business Administration (SBA) in accordance with § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 1996) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301 (c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-0268 on April 8, 1997 to Centura SBIC, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 1, 1997.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 97-11772 Filed 5-5-97; 8:45 am]

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#### SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2950, Amdt. #2]

#### State of Arkansas

In accordance with a notice from the Federal Emergency Management Agency, dated April 24, 1997, the above-numbered Declaration is hereby amended to include the Counties of Cleburne, Dallas, Faulkner, Grant, Greene, Sharp, Union, and White as a disaster area due to damages caused by severe storms and flooding beginning on April 4, 1997 and continuing through April 21, 1997.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Ashley, Bradley, Clay, Conway, Fulton, Hot Spring, Independence, Izard, Perry, Randolph, Saline, Stone, Van Buren, and Woodruff in the State of Arkansas; Union in the State of Louisiana; and Oregon in the State of Missouri.

The numbers assigned to this disaster for economic injury are 947400 for Arkansas, 947600 for Louisiana, and 947700 for Missouri.