

company or other subsidiaries of its parent and when the purchaser of the finance subsidiary's securities ultimately looks to the parent and not to the finance subsidiary for repayment.<sup>2</sup> Rule 3a-5(b)(2)(i) defines "parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a) of Act.

2. AFC is not a "parent company" within the definition in rule 3a-5(b)(2)(i) because AFC meets the definition of investment company in section 3(a) of the Act and is excepted from that definition by section 3(c)(6) of the Act. Applicant, therefore, is unable to rely on rule 3a-5 and seeks an exemption from all provisions of the Act.

3. In the release adopting rule 3a-5, the Commission stated that it may be appropriate to grant exemptive relief to the finance subsidiary of an issuer exempted from the definition of investment company under section 3(c) of the Act, but only on a case-by-case basis upon an examination of all relevant facts.<sup>3</sup> According to the adopting release, the concern was that a company could be considered not an investment company under section 3(c) of the Act and still be engaged primarily in investment company activities.<sup>4</sup>

4. Section 6(c) of the Act provides, in pertinent part, that the SEC may, conditionally or unconditionally, exempt any person or class of persons from any provision or provisions of the Act to the extent that 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. Applicant states that AFC is not engaged primarily in investment company activities, but that its principal activity is the provision of sales financing for Airbus Industrie customers. In addition, if AFC were itself to issue the securities that are to be issued by applicant and use the proceeds for its own purposes or advance them to its subsidiaries, AFC would not be subject to regulation under the Act. While AFC has chosen instead to use applicant as a financing vehicle, the Guarantee ensures that holders of applicant's securities will have direct

recourse against AFC. Accordingly, applicant submits that the relief requested satisfies the section 6(c) standard.

#### **Applicant's Condition**

Applicant agrees that the order granting the requested relief shall be subject to the condition that:

Applicant will comply with all of the provisions of rule 3a-5 under the Act, except that AFC will not meet the portion of the definition of "parent company" in rule 3a-5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act and is engaged primarily, directly or through majority owned subsidiaries, in one or more of the businesses described in section 3(c)(5)(A) and/or section 3(c)(5)(B) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

##### **Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (American Restaurant Partners, L.P., Class A Units of Limited Partnership Interests) File No. I-9606**

November 26, 1997.

American Restaurant Partners, L.P. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the preambles and resolutions adopted by the general partners of the Company authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons for the proposed withdrawals, and the facts supporting the withdrawal.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company considered the facts set forth below and determined that the withdrawal would be in the best interests of the holders of the Security.

The Company's decision to withdraw the Security from listing and registration on the Amex is based on a change in the federal income tax laws that will, effective January 1, 1998, subject the Company to taxation as a corporation if the Company's Security remains listed on the Exchange. Under a grandfather clause that expires December 31, 1997, the Company is sheltered from the Internal Revenue Code provisions which tax publicly traded limited partnerships as corporations. To avoid taxation as a corporation, the Company must immediately withdraw its Security from listing and registration on the Amex so that the Security is no longer traded on an established securities market by the end of 1997.

The Company has represented that it intends to establish a qualified matching service in accordance with Department of Treasury regulations so that holders of the Security may exchange their interests. The Company has further represented that it may put into effect a redemption and repurchase agreement to provide holders of the Security with another means for exchanging their interests.

The Company shall continue to send annual and quarterly reports containing financial statements to holders of the Security so long as it is obligated to do so under the Act.

By letter dated November 12, 1997, the Amex informed the Company that the Exchange has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

Any interested person may, on or before December 18, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

<sup>2</sup> See Investment Company Act Release No. 14275 (Dec. 14, 1984) (release adopting rule 3a-5 under the Act).

<sup>3</sup> *Id.* at 49443.

<sup>4</sup> *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 97-31617 Filed 12-2-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22910; 812-10638]

### First American Funds, Inc., et al.

November 25, 1997.

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

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(d) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 to permit certain joint transactions.

**SUMMARY OF APPLICATION:** The requested order would supersede a prior order to permit certain registered investment companies to invest excess cash in money market funds advised by the same adviser for cash management purposes. The order also would amend a prior order permitting a fund of funds to purchase shares of certain investment companies in the same group of investment companies in excess of the limits of section 12(d)(1).

**Applicants:** First American Funds, Inc. ("FAF"), First American Strategy Funds, Inc. ("FASF"), First American Investment Funds, Inc. ("FAIF"), including each current series and each subsequently created series of FAF, FASF and FAIF, U.S. Bank National Association or any other entity controlling, controlled by, or under common control with U.S. Bank National Association ("U.S. Bank"), and other registered investment companies or their series that are now or in the future advised by U.S. Bank.

**Filing Dates:** The application was filed on April 29, 1997 and amended on October 1, 1997. Applicants have agreed to file an additional amendment during the notice period, the substance of which is incorporated 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 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 December 22, 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. FAF, FASF, and FAIF, Oaks, Pennsylvania 19456; U.S. Bank, 601 Second Avenue South, Minneapolis, Minnesota 55402.

**FOR FURTHER INFORMATION CONTACT:** J. Amanda Machen, Senior Counsel, at (202) 942-7120, 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, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### Applicants' Representations

1. FAIF is a registered open-end management investment company that currently offers twenty-three series, each of which is a variable net asset value fund. FAF is a registered open-end management investment company that currently offers three series, each of which is a money market fund subject to the requirements of rule 2a-7 under the Act. Each existing series of FAF and any future money market portfolio of FAF or FAIF or of other registered investment companies advised by U.S. Bank are referred to collectively as "Money Market Funds." Each existing series of FAIF and any future variable net asset value portfolio of FAIF or FAF or of other registered investment companies advised by U.S. Bank are referred to collectively as "Non-Money Market Funds." The Money Market Funds and the Non-Money Market Funds are referred to as the "Funds."

2. FASF is a registered open-end management investment company that currently offers four series, each of which is a variable net asset value fund. Under an existing order ("Fund of Funds Order"),<sup>1</sup> FASF operates as a "fund of funds," the principal investments of which are shares of

certain series of FAIF and FAF ("Underlying Portfolios").

3. U.S. Bank, a wholly owned subsidiary of U.S. Bancorp ("USBC"), a bank holding company, serves as investment adviser for each series of FAIF, FAF and FASF. U.S. Bank has retained Marvin & Palmer Associates, Inc. ("Marvin & Palmer") as a sub-adviser for FAIF's International Fund (U.S. Bank, Marvin & Palmer, and any future sub-adviser to any Fund are referred to collectively as the "Investment Advisers"). First Trust National Association (the "Custodian") a wholly owned subsidiary of USBC, serves as custodian for the assets of each series of FAIF, FAF, and FASF.

4. Pursuant to an exemptive order, the Non-Money Market Funds can invest in the money market series of FAF in excess of the limits of section 12(d)(1) of the Act, so long as each Fund's aggregate investment in the money market fund does not exceed the greater of 5% of the Fund's total net assets or \$2.5 million ("Cash Sweep Order").<sup>2</sup>

5. Applicants request an order that would (a) supersede the Cash Sweep Order to permit (i) each of the Funds ("Investing Funds") to use the cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the Money Market Funds, provided that no Investing Fund will have more than an aggregate of 25% of its total assets invested in all Money Market Funds at any time, and (ii) the Money Market Funds to sell their shares to, and to redeem their shares from, the Investing Funds; and (b) amend the Fund of Funds Order to permit FASF to invest in shares of Underlying Portfolios that will in turn invest in shares of the Money Market Funds to the extent permitted by the order sought in this application ("Amended Cash Sweep Order").<sup>3</sup> Because the Amended Cash Sweep Order will allow the Underlying Portfolios to invest greater amounts in the Money Market Funds than is allowed under the Cash Sweep Order, condition 2 to the Fund of Funds Order would be amended to allow FASF to continue to invest in the Underlying Portfolios.<sup>4</sup>

6. Each of the Funds has, or may have, Uninvested Cash held by its Custodian.

<sup>2</sup> First American Investment Funds, Inc., Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

<sup>3</sup> The Amended Cash Sweep Order also would delete conditions 3 and 6 in the Fund of Funds Order.

<sup>4</sup> The fund of funds series of FASF are not "Investing Funds" as defined in the application, therefore any investment by them in the Money Market Funds would be under the Fund of Funds Order and subject to the conditions of that Order.

<sup>1</sup> First American Investment Strategy Funds, Inc., Investment Company Act Release Nos. 22173 (Aug. 26, 1996) (notice) and 22241 (Sept. 23, 1996) (order).