

RAILROAD RETIREMENT BOARD**Agency Forms Submitted for OMB Review**

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

- (1) *Collection title:* Statement of Authority to Act for Employee.
- (2) *Form(s) submitted:* SI-10.
- (3) *OMB Number:* 3220-0034.
- (4) *Expiration date of current OMB clearance:* 12/31/1999.
- (5) *Type of request:* Extension of currently approved collection.
- (6) *Respondents:* Individuals or Households, Business or other for-profit.
- (7) *Estimated annual number of respondents:* 400.
- (8) *Total annual responses:* 400.
- (9) *Total annual reporting hours:* 40.
- (10) *Collection description:* Under 20 CFR 335.2, the Railroad Retirement Board (RRB) accepts claims for sickness benefits by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB reviewer, Laurie Schack (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 99-26173 Filed 10-6-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 2 4068; 812-11788]

The Infinity Mutual Funds, Inc., et al., Notice of application

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of an interim investment advisory agreement ("Interim Advisory Agreement") and interim subadvisory agreements ("Interim Subadvisory Agreements") (collectively, "Interim Agreements") for a period of up to 150 days beginning on the later of the date of a change in control of First American National Bank ("Adviser") or the date the requested order is issued and continuing until the date the Interim Agreements are approved or disapproved by shareholders of the investment company (but in no event later than March 31, 2000) ("Interim Period"). The order also would permit the Adviser and Subadvisers (as defined below) to receive all fees earned under the Interim Agreements during the Interim Period following shareholder approval.

APPLICANTS: Infinity Mutual Funds, Inc. ("Company"), Adviser, Bennett Lawrence Management, LLC ("Bennett Lawrence"), Lazard Asset Management ("Lazard") and Womack Asset Management, Inc. ("Womack") together with Bennett Lawrence and Lazard, the "Subadvisers").

FILING DATE: The application was filed on September 24, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 Commission's Secretary 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 22, 1999 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609; Applicants, c/o David Stephens, Esq., Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York, 10038.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942-0574 or George J. Zornada, 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Company is a Maryland corporation registered under the Act as an open-end management investment company. The Company currently offers 21 series advised by the Adviser (the "Funds"). The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement ("Existing Advisory Agreement"). Womack provides subadvisory services to the ISG Small-Cap Opportunity Fund pursuant to a separate agreement with the Adviser ("Existing Womack Subadvisory Agreement"), Bennett Lawrence provides subadvisory services to the ISG Mid-Cap Fund pursuant to a separate agreement with the Adviser ("Existing Bennett Subadvisory Agreement"), and Lazard provides subadvisory services to the ISG International equity Fund pursuant to a separate agreement with the Adviser ("Existing Lazard Subadvisory Agreement" together with the Existing Womack Subadvisory Agreement and the Existing Bennett Subadvisory Agreement, the "Existing Subadvisory Agreements").

2. The Adviser, a national banking association, is a wholly-owned subsidiary of First American Corporation ("First American"), a registered bank holding company, and is exempt from the registration requirements of the Investment Advisers Act of 1940 ("Advisers Act"). Womack, Bennett Lawrence, and Lazard are investment advisers registered under the Advisers Act.

3. First American, the parent company of the Adviser, and AmSouth Bancorp ("AmSouth"), a bank holding company, have agreed to a merger whereby First American will be merged with and into AmSouth (the "Transaction"). The Transaction is currently expected to be consummated on or about October 4, 1999.

4. Applicants state that the Transaction will result in an assignment and thus automatic termination of the Existing Advisory Agreement and could be deemed to result in an assignment and termination of the Existing Subadvisory Agreements. Applicants request an exemption to: (i) Permit the Adviser to provide investment advisory services to the Funds pursuant to the

Interim Advisory Agreement and the Subadvisers to provide subadvisory services to the relevant Funds pursuant to the Interim Subadvisory Agreements during the Interim Period without obtaining prior shareholder approval, and (ii) permit the Adviser and the Subadvisers to receive fees earned under the respective Interim Agreements with respect to each Fund during the Interim Period if, and to the extent that, the Interim Agreements are approved by the shareholders of the Funds. The requested exemption would cover an Interim Period commencing on the later of the date the Transaction is consummated or the date the requested order is issued and continuing until the Interim Agreements are approved or disapproved by the Funds' shareholders (but in no event later than March 31, 2000).¹ Applicants state that the Interim Agreements will have the same terms and conditions as the Existing Advisory Agreement and the Existing Subadvisory Agreements except for the effective dates and escrow provisions.

5. On September 22, 1998, the Company's board of directors ("Board"), including a majority of directors who are not "interested persons" of the Company, as that term is defined in section 2(a)(19) of the Act (the "Independent Directors"), held an in-person meeting in accordance with section 15(c) of the Act to evaluate whether the terms of the Interim Agreements are in the best interests of the Funds and their shareholders and to approve the Interim Agreements. Proxy materials seeking the approval of the Interim Agreements are expected to be mailed to shareholders of each Fund on or about January 2, 2000.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution ("Escrow Agent"). The fees payable to the Adviser and Subadvisers during the Interim Period under the Interim Agreements will be paid into an interest-bearing escrow account maintained by the Escrow Agent. The Escrow Agent will release the amounts held in the escrow account

(including any interest earned): (a) To the Adviser and Subadvisers only if shareholders of the applicable Fund approve the Interim Agreements or (b) to the applicable Fund if the Interim Period has ended and the Interim Agreements have not been approved by the requisite shareholder vote. The Escrow Agent will release the moneys as provided only upon receipt of a certificate from officers of the Company that the action is appropriate based on shareholder votes. Because any such certificate is sent, the Independent Directors of the Company will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Transaction will result in an "assignment" of the Existing Advisory Agreement and could be deemed to result in an "assignment" of the Existing Subadvisory Agreements and that the Existing Advisory Agreement and Existing Subadvisory Agreements will terminate according to their terms.

2. Rule 15a-4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that because of the benefits to First American, the Adviser's parent, arising

from the Transaction, applicants, cannot rely on rule 15a-4.

3. Section 6(c) provides that the Commission may exempt any person, security, or transaction, from any provision of the Act, if and to the extent that 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 believe that the requested relief meets this standard.

4. Applicants state that the terms and timing of the Transaction were determined in response to a number of business factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants assert that there is insufficient time to obtain shareholder approval of the Interim Agreements before the Transaction is consummated. Applicants further assert that the requested relief would prevent any disruption in the delivery of investment advisory and subadvisory services to the Funds during the period following consummation of the Transaction. Applicants represent that, under the Interim Agreements during the Interim Period, the Funds will receive substantially identical investment advisory and subadvisory services, provided in substantially the same manner, as they received prior to the consummation of the Transaction. Applicants state that, in the event of any material change in personnel of the Adviser or the Subadvisers providing services pursuant to the Interim Agreements during the Interim Period, the Adviser and the Subadvisers will apprise and consult the Board to assure that the Board, including a majority of the Independent Directors, is satisfied that the services provided by the Adviser and the Subadvisers will not be diminished in scope and quality.

Applicants' Conditions

The Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The Interim Agreements will have the same terms and conditions as the respective Existing Advisory Agreement and Existing Subadvisory Agreements, except for their effective dates and escrow provisions.

2. Fees earned by the Adviser and Subadvisers in respect of the relevant Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such fees) will be paid to (a) the Adviser and Subadvisers in accordance with the Interim Agreements, only after the requisite approvals are obtained, or

¹ Applicants state that if the consummation of the Transaction precedes the issuance of the requested order, the Adviser and Subadviser will serve after the consummation of the Transaction and prior to the issuance of the order in a manner consistent with their fiduciary duties to provide investment advisory and subadvisory services to the Funds even though approval of the Interim Agreements has not yet been secured from the Funds' shareholders. Applicants also state that, in such event, the Adviser and Subadvisers will be entitled to receive from the Funds, with respect to the period from the date of consummation of the Transaction until the issuance of the order, no more than the actual out-of-pocket costs to the Adviser and Subadvisers for providing investment advisory services to the Funds.

(b) the respective Fund, in absence of such approval with respect to such Fund.

3. The Company will hold meetings of shareholders to vote on approval of the Interim Agreements within the Interim Period (but in no event later than March 31, 2000).

4. The Adviser or an entity controlling, controlled by, or under common control with the Adviser, not the Funds, will bear the costs of preparing and filing the application and the costs relating to the solicitation of shareholder approval of the Funds necessitated by the Transaction.

5. The Adviser and Subadvisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Company's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided under the Existing Advisory Agreement and Existing Subadvisory Agreements. If personnel providing material services during the Interim Period change materially, the Adviser and Subadvisers, as the case may be, will apprise and consult with the Board to assure that the Directors, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 99-26153 Filed 10-6-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24065; 812-11242]

Merrill Lynch, Pierce, Fenner & Smith Incorporated; Notice of Application

September 30, 1999

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 ("Act") for an exemption from section 12(d)(1) of the Act and under section 6(c) of the Act for an exemption from section 14(a) of the Act.

SUMMARY OF APPLICATION: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") requests and order

with respect to the Exchangeable Preferred Trusts and future trusts that are substantially similar and for which Merrill Lynch will serve as a principal underwriter ("Trusts") that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act, to own a greater percentage of the total outstanding voting stock ("Securities") of any Trust than that permitted by section 12(d)(1) and (ii) exempt the Trusts from the initial net worth requirements of section 14(a). Merrill Lynch also requests an order to amend a prior order ("Prior Order").¹

FILING DATES: The application was filed on August 3, 1998. Applicant has agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

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 25, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests would 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 20549-0609. Applicant, World Financial Center, North Tower, 250 Vesey Street, New York, New York 10281-1318.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942-0634, 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 at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. no. 202-942-8090).

¹ Merrill Lynch, Pierce Fenner & Smith Incorporated and Merrill Lynch Government Securities, Inc., Investment Company Act Release Nos. 22758 (July 22, 1997) (notice) and 22789 (Aug. 18, 1997) (order).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Merrill Lynch or an entity controlling, controlled by, or under common control with Merrill Lynch will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) or placement agent of the Securities. Each Trust will issue Securities that are exchangeable or redeemable for non-cumulative preferred shares ("Shares") of a non-United States issuer (the "Share Issuer"). The Securities may be issued through either a public or a private offering.²

2. Each Trust will, at the time of the issuance of its Securities, invest the proceeds in and hold debt securities ("Debt Securities") issued by a special purpose entity ("Debt Securities Issuer").³ Each Trust's investment objective will be to distribute to the holders of the Securities ("Holders") (i) pro rata the interest the Trust receives on the Debt Securities from time to time and (ii) the ultimate proceeds of the redemption of the Debt Securities upon the occurrence of certain events ("Exchange Events") which will be specified in the agreement establishing the terms of each Trust and the Debt Securities or the instrument or agreement, if any, pursuant to which the Debt Securities are issued. Proceeds will consist of (i) Shares, (ii) depositary shares ("Des") representing Shares, (iii) cash from the redemption or repurchase of Shares by the Share Issuer, or (iv) any combination of the above ("Proceeds").⁴ The Share Issuer will determine the composition of the Proceeds following an Exchange Event. No other party has discretion to vary the composition of the Proceeds.⁵ A Trust will dissolve on or shortly after the occurrence of an Exchange Event.

3. Applicant states that the Trusts' structure is designed to enable the applicable Share Issuer to issue Shares on the date that the Securities are issued. If the Share Issuer is a bank, this

² Applicants also seek to amend the Prior Order to state that Securities issued by Structured Yield Products Exchangeable for Stock Trusts ("Structured Yield Trusts") may be offered in private placements as well as in public offerings.

³ All of the capital stock of the Debt Securities Issuer will be owned by a charitable trust.

⁴ Pursuant to the terms of the Shares, the Share Issuer may be entitled to redeem or repurchase the Shares for cash, subject to regulatory consent or requirement, at its discretion after a designated date or earlier upon certain tax, regulatory or other specified events.

⁵ The Share Issuer may provide cash in lieu of fractional shares or make other antidilution or similar arrangements.