Employee Share Ownership Plan

The purpose of the ESOP is to enable eligible employees of Southern Company Services, Inc. (''SCS'') and other affiliates or subsidiaries of Southern that adopt the ESOP (the ''Employing Companies'') to share in the future of Southern, to provide participants with an opportunity to accumulate capital for their future economic security, and to enable participants to acquire Southern common stock. All of the Applicants are currently Employing Companies.

The ESOP permits the Employing Companies to contribute cash or common stock in an amount or under a formula that SCS will determine in its sole and absolute discretion. Cash contributions would be used to purchase common stock at market value, as determined by SCS. Cash dividends paid on the contributed common stock allocated to participating employees' accounts generally would be reinvested in additional shares of common stock, unless the employees elects to have the dividends distributed to him.

Southern states that the proceeds from the proposed sale of the common stock will be used by Southern to acquire the securities of associate companies and interests in other businesses, including interests ''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), in any transaction permitted under the Act, and for other general corporate purposes. Southern does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30919 Filed 11–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24148; 812–11846]

Conning Asset Management Company, et. al., Notice of Application

November 19, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

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 new investment advisory and subadvisory and subadvisory agreements (collectively, ''New Agreements'') for a period of up to 150 days beginning on the later of the date on which Metropolitan Life Insurance Company (''MetLife'') acquires all the common stock of GenAmerica Corporation (''GAC'') from General American Mutual Holding Company (''GAMHC'') or the date the requested order is issued and continuing until the date the New Agreements are approved or disapproved by shareholders of the respective investment companies (but in no event later than April 30, 2000) (''Interim Period''). The order also would permit payment of all fees earned under the New Agreements during Interim Period following shareholder approval.

APPLICANTS: Conning Asset Management Company (''Conning Management'') and Cova Investment Advisory Corporation (''COVA'') (collectively, ''Advisers'').

FILING DATE: The application was filed on November 5, 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 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 by 5:30 p.m. on December 13, 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 the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants: Conning Asset Management Company, 700 Market Street, St. Louis, Missouri 63101; Cova Investment Advisory Corporation, One Tower Lane, Suite 3000, Oakbrook Terrace, Illinois 60181–4644.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120 or Nadya B. Roytblat, 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 at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (Telephone (202) 942–8090).

Applicants' Representations

1. Conning Management, a Missouri corporation, is an investment adviser registered under the Investment Advisers Act of 1940 Act (''Advisers Act''). Conning Management is a wholly-owned, indirect subsidiary of Conning Corporation, which in turn is a majority-owned, indirect subsidiary of GAC. COVA, an Illinois corporation, is an investment adviser registered under the Advisers Act, and a wholly-owned, indirect subsidiary of GAC. General American Life Insurance Company (''General American'') is a wholly-owned subsidiary of GAC and indirectly owns 100% of COVA and a controlling interest in Conning Management. GAC is a wholly-owned subsidiary of GAMHC, a Missouri mutual holding company.

2. Conning Management serves as investment adviser or subadviser to certain open-end management investment companies, or their portfolios, registered under the Act.[1] COVA serves as investment adviser to series of the Cova Series Trust, an open-end management investment company registered under the Act.[2] The Advisers serve as investment advisers to the Funds pursuant to existing advisory or subadvisory agreements (''Existing Agreements'').

3. On August 26, 1999, GAMHC and MetLife entered into a stock purchase agreement under which GAMHC agreed to sell all of the stock it owns in GAC to MetLife (the ''Transaction''). The Transaction is currently expected to occur during December 1999 or during

[1] Conning Management serves as investment adviser to the following portfolios of General American Capital Company: Money Market Fund, Bond Index Fund, Asset Allocation Fund, Managed Equity Fund, S&P 500 Index Fund, Mid-Cap Equity Fund, Small-Cap Equity Fund, and International Index Fund. Conning Management also serves as subadviser to the Money Market Fund, a portfolio of Sage Life Investment Trust, and the Conning Money Market Portfolio, a portfolio of Mercantile Funds, Inc.

[2] The portfolios include the Quality Bond Portfolio, Small Cap Stock Portfolio, Large Cap Stock Portfolio, Select Equity Portfolio, International Equity Portfolio, Emerging Markets Equity Portfolio, Bond Debenture Portfolio, Mid-Cap Value Portfolio, Large Cap Research Portfolio, Developing Growth Portfolio, Lord Abbett Growth and Income Portfolio, Balanced Portfolio, Small Cap Equity Portfolio, Equity Income Portfolio, Growth & Income Equity Portfolio, Riggs Stock Portfolio, Riggs Small Company Stock Portfolio, and Riggs U.S. Government Securities Portfolio.

the first quarter of 2000 (''Closing Date'').

4. Applicants state that the Transaction will result in a change of control of the Advisers, which will result in an assignment and automatic termination of the Existing Agreements. Applicants request an exemption to: (i) Permit the Advisers to provide investment advisory services to the Funds pursuant to the New Agreements during the Interim Period without obtaining prior shareholder approval, and (ii) permit the Advisers to receive fees earned under the respective New Agreements with respect to each Fund during the Interim Period if, and to the extent that, the New 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 New Agreements are approved or disapproved by the Funds' shareholders (but in no event later than April 30, 2000).[3] Applicants state that the New Agreements will have the same terms and conditions as the Existing Agreements except for the effective and termination dates.

5. Applicants state that the boards of directors (''Boards''), including a majority of directors who are not ''interested persons'' as that term is defined in section 2(a)(19) of the Act (the ''Independent Directors''), of Mercantile Funds, Inc., General American Capital Company, and Cova Series Trust held an in-person meeting in accordance with section 15(c) of the Act on October 19, October 27, and November 12, 1999, respectively, to evaluate whether the terms of the New Agreements are in the best interests of the Funds and their shareholders and to approve the New Agreements.[4] The Boards, including the Independent Directors, voted to approve the relevant New Agreements and to recommend that Fund shareholders approve the New Agreements. Proxy materials seeking the approval of the New Agreements are expected to be mailed to shareholders of each Fund during the last quarter of 1999 or the first quarter of 2000.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution (''Escrow Agent''). The fees payable to the Advisers during the Interim Period under the New 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 relevant Adviser only if that Fund's shareholders approve the applicable New Agreement or (b) to the applicable Fund if the Interim Period has ended and the New 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 Adviser that the action is appropriate based on shareholder votes. Before any such certificate is sent, the Adviser will notify the relevant Board, including the Independent Directors.

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. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to reflect control. Applicants state that the Transaction will result in a change of control of the Advisers. Accordingly, applicants state that the Transaction may result in an assignment of each Existing Agreement and, therefore, that each agreement will terminate according to its 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 GAMHC, the Advisers' indirect parent, arising from the Transaction, applicants cannot rely on rule 15a–4.

3. Section 6(c) provides that the SEC 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 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 New 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 New 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 either Adviser providing services pursuant to the New Agreements during the Interim Period, the respective Adviser will apprise and consult the relevant Fund's Board to assure that the Board, including a majority of the Independent Directors, is satisfied that the services provided by the Adviser will not be diminished in scope and quality.

[3] Applicants state that if the consummation of the Transaction precedes the issuance of the requested order, the Advisers 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 New Agreements has not yet been secured from the Funds' shareholders. Applicants also state that, in such event, the Advisers 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 Advisers for providing investment advisory or subadvisory services to the Funds.

[4] Applicants acknowledge that, to the extent that the Board of any other Fund cannot meet to approve a New Agreement prior to the Closing Date, the Fund may not rely on the exemptive relief requested in the application.

Applicants' Conditions

The Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The New Agreements will have the same terms and conditions as the corresponding Existing Agreements, except for their dates of effectiveness and termination.

2. Fees earned by the Advisers in respect of the relevant New 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) an Adviser in accordance with the New Agreements only after the requisite approvals are obtained, or (b) the respective Fund, in the absence of such approval with respect to such Fund.

3. Each Fund will hold shareholders' meetings to vote on approval of the relevant New Agreements within the Interim Period (but in no event later than April 30, 2000).

4. The Advisers, or an entity controlling, controlled by, or under common control with the Advisers, not the Funds, will bear the costs of preparing and filing the application and the costs relating to the solicitation of the relevant shareholders and beneficial owners of the approval or disapproval of the applicable New Agreements.

5. The Advisers 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 Fund's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided under the Existing Agreements. If personnel providing material services during the Interim Period change materially, the relevant Adviser will apprise and consult with the Board to assure that the Board, including a majority of the Independent Directors, of the Fund are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30835 Filed 11–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42160; File No. SR–NASD–98–74]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 3110(f) Governing Use of Predispute Arbitration Agreements With Customers

November 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On May 26, 1999 and July 27, 1999 the NASD submitted Amendments No. 1 and 2 to the proposed rule change, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend NASD Rule 3110(f) to: require additional disclosure in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and clarify the rule regarding use of choice of law provisions in predispute arbitration agreements. Below is the text of the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation, dated May 26, 1999 and letter to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, from Joan C. Conley, Sr. Vice President and Corporate Secretary, NASD Regulation, dated July 26, 1999.

RULES OF THE ASSOCIATION

3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYERS, AND OTHERS' EMPLOYEES

3110. BOOKS AND RECORDS

(f) Requirements When Using Predispute Arbitration Agreements [With] *for* Customer *Accounts*

(1) Any predispute arbitration agreement clause shall be highlighted and shall be immediately preceded by the following [disclosure] language [(printed] in outline form [as set forth herein) which shall also be highlighted].

This agreement contains a predispute arbitration clause. By signing an arbitration agreement, the parties agree as follows:

(A) [Arbitration is final and binding on the parties.] *All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.*

(B) [The parties are waiving their right to seek remedies in court, including the right to a jury trial.] *Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.*

(C) [Pre-arbitration discovery is generally more limited than and different from court proceedings.] *The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.*

(D) [The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings of the arbitrators is strictly limited.] *The arbitrators do not have to explain the reason(s) for their award.*

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(2) (A) [Immediately preceding the signature line,] *In any agreement containing a predispute arbitration agreement,* there shall be a *highlighted* statement *immediately preceding any signature line or other place for*