

requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e-2 provides a separate account with an exemption from the registration provisions of section 8 of the Act if the account files with the Commission Form N-6EI-1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of Rule 6e-2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to Rule 6e-2.

Since 1997, there have been no filings under paragraph (b)(9) of Rule 6e-2 by management accounts. Further, all variable life separate accounts that have filed post-effective amendments to their registration statements during this period have been structured as unit investment trusts and thus have not been subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1997, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e-2.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive

Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549.

Dated: February 3, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24278; 812-11562]**

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

February 4, 2000.

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

**ACTION:** Notice of an application under sections 6(c), 10(f), and 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from sections 10(f) and 17(a)(1) of the Act.

**SUMMARY OF THE APPLICATION:** The requested order would permit certain registered management investment companies to purchase certain securities from an affiliated underwriter and through group orders placed with an underwriting syndicate that includes the affiliated underwriter.

**APPLICANT:** First American Investment Funds, Inc. ("FAIF"); Minnesota Municipal Income Portfolio, Inc.; Minnesota Municipal Term Trust, Inc.; Minnesota Municipal Term Trust, Inc.-II; U.S. Bank National Association ("U.S. Bank"); and U.S. Bancorp Piper Jaffray Inc. ("Piper Jaffray").

**FILING DATES:** The application was filed on April 2, 1999 and was amended on December 22, 1999. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

**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 February 29, 2000 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 by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. Applicants, c/o James D. Alt, Esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, MN 55402.

**FOR FURTHER INFORMATION CONTACT:** Rachel H. Graham, Senior Counsel, at (202) 942-0583, 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 from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

### *Applicants' Representations*

1. FAIF is an open-end management investment company registered under the Act. FAIF offers its shares in several series, including the Minnesota Intermediate Tax Free Fund and the Minnesota Tax Free Fund. Minnesota Municipal Income Portfolio, Inc., Minnesota Municipal Term Trust, Inc., and Minnesota Municipal Term Trust, Inc.-II are closed-end management investment companies registered under the Act. The two named series of FAIF, together with the three closed-end investment companies, collectively are referred to in this notice as the "Funds." The Funds invest primarily in debt securities of the State of Minnesota, its political subdivisions, authorities, agencies, instrumentalities and corporations, the interest on which is exempt from federal and Minnesota personal income taxes ("Minnesota Tax-Exempt Securities").

2. U.S. Bank, which is exempt from registration as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") pursuant to section 202(a)(11) of the Advisers Act, serves as investment adviser to each Fund. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp.

3. Piper Jaffray, a registered broker-dealer and investment banking firm, is a wholly-owned indirect subsidiary of U.S. Bancorp. Applicants state that Piper Jaffray is one of the leading underwriters of most types of Minnesota Tax-Exempt Securities based on both dollar volume and number of new issues. In 1998, Piper Jaffray served as underwriter of approximately \$2.4 billion in principal amount of Minnesota Tax-Exempt Securities. According to applicants, this amount

represented approximately 46% of the total dollar amount, and approximately 24% of the total number, of new issues of Minnesota Tax-Exempt Securities during that year.

4. Applicants request relief under section 10(f) from section 10(f) and under sections 6(c) and 17(b) from section 17(a)(1) to permit the Funds to purchase Minnesota Tax-Exempt Securities from Piper Jaffray, when Piper Jaffray is the sole underwriter of these securities or these securities are unavailable from other members of an underwriting syndicate. Applicants also request relief under these sections to permit the Funds to purchase Minnesota Tax-Exempt Securities through group orders placed with an underwriting syndicate of which Piper Jaffray is a member.<sup>1</sup> The requested order would not permit transactions between Piper Jaffray and the Funds in other securities or in Minnesota Tax-Exempt Securities sold in the secondary market.

5. Applicants request that any relief granted pursuant to the application also apply to all current and future series of FAIF and to any other registered management investment companies organized in the future that are advised or subadvised by U.S. Bank (or a person controlling, controlled by, or under common control with U.S. Bank) and that invest primarily in Minnesota Tax-Exempt Securities (collectively, "Future Funds").<sup>2</sup>

#### Applicants' Legal Analysis

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from purchasing securities from an underwriting syndicate in which an affiliated person of the company's investment adviser acts as a principal underwriter. Under section 2(a)(3) of the Act, Piper Jaffray is an affiliated person of U.S. Bank because both entities are under the control of U.S. Bancorp.

2. Section 10(f) further provides that the Commission, by rule or order, may exempt any transaction or class of transactions from section 10(f) to the extent that the exemption is consistent with the protection of investors. Rule 10f-3 under the Act permits a registered investment company to make purchases otherwise prohibited by section 10(f) under certain conditions. Under the rule, the company may not purchase the

securities being offered directly or indirectly from its affiliated underwriter, and purchases of municipal securities may not be designated as group sales or otherwise allocated to the account of the affiliated underwriter.

3. Section 17(a)(1) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling securities to the investment company. Under section 17(b) of the Act, the Commission will exempt a transaction from the provisions of section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and 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.

4. Applicants assert that the supply of newly-issued Minnesota Tax-Exempt Securities has remained relatively stable over the past several years, while the demand for these securities has been increasing. Applicants state that, in their experience, group orders generally are given priority over designated orders and member orders in underwritings of Minnesota Tax-Exempt Securities.<sup>3</sup> Due to the priority given to group orders, the Funds may not be able to purchase Minnesota Tax-Exempt Securities through designated orders or member orders in an offering that is oversubscribed. Applicants assert that the Funds therefore may be precluded from making purchases in any oversubscribed offering where Piper Jaffray is a member of the underwriting syndicate. As noted above, applicants assert that Piper Jaffray is one of the leading underwriters of most types of Minnesota Tax-Exempt Securities.

5. Applicants assert that the Funds are largely dependent upon the new issue market for Minnesota Tax-Exempt Securities in order to meet their portfolio needs. According to applicants, the availability of Minnesota

Tax-Exempt Securities in the secondary market is unpredictable because, among other reasons, a substantial portion of these securities are held to maturity by their original purchasers. Applicants also assert that prices may be higher in the secondary market because of dealer markups and, because secondary market purchases are often made at a discount to par, a portion of the return on the securities purchased may be treated as taxable income.

6. Applicants state that permitting the Funds to buy Minnesota Tax-Exempt Securities directly from Piper Jaffray when the securities are unavailable from another underwriter, or through group orders when Piper Jaffray is a member of the underwriting syndicate for the securities, would benefit the shareholders of the Funds by providing the Funds with adequate access to the new issue market for Minnesota Tax-Exempt Securities. Applicants assert that, as a condition to the requested relief, the Funds, together with all other persons for whom U.S. Bank and its affiliates have investment discretion (collectively, "Related Purchasers") would be prohibited from purchasing a majority or more of any class of an issue of Minnesota Tax-Exempt Securities when Piper Jaffray is an underwriter of the securities. This condition would operate in addition to the requirement in rule 10f-3(b)(7)(i) that the aggregate amount of securities of any class of Minnesota Tax-Exempt Securities purchased by the Funds, together with all other investment companies advised by U.S. Bank, may not exceed 25% of the principal amount of the offering of that class. According to applicants, these two requirements would protect the Funds against the dumping of unmarketable securities.

7. Applicants note that, as a further condition to the requested relief, the aggregate value of Minnesota Tax-Exempt Securities held by a fund and acquired pursuant to the order may not exceed 50% of the Fund's total net assets. According to applicants, this condition should ensure that no Fund is operated primarily as a vehicle for purchasing securities in transactions permitted by the order. Applicants state that the order also would be conditioned on certain procedural safeguards designed to protect the independence of U.S. Bank in making investment decisions on behalf of the Funds and to ensure appropriate oversight of all transactions effected in reliance on the order. Applicants further state that the requested order meets the standards for relief set forth in sections 6(c), 10(f), and 17(b) of the Act.

<sup>1</sup> A group order is an order that is allocated to all members of an underwriting syndicate in proportion to their relative participations.

<sup>2</sup> Each Fund that currently intends to rely on the requested order is named as an applicant. Any Future Fund that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

<sup>3</sup> In a designated order, the purchaser designates one or more syndicate members to receive the credit for sale. In a member order, the purchaser places an order directly with a member of the syndicate that retains that portion of the commission not retained by the manager.

**Applicant's Conditions**

Applicants agree that the order will be subject to the following conditions:

1. Transactions effected pursuant to the order will be effected in accordance with all of the provisions of rule 10f-3, other than paragraph (b)(8). At least a majority of any class of an issue of Minnesota Tax-Exempt Securities purchased pursuant to the order must be purchased by persons who are not Related Purchasers. If the aggregate number of securities the Related Purchasers wish to acquire exceeds the permitted amount, the securities acquired will be allocated to each Related Purchaser in the proportion that the number of securities that such Related Purchaser wishes to acquire bears to the total number of securities that all Related Purchasers wish to acquire.

2. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales may be effected only in Minnesota Tax-Exempt Securities that, at the time of purchase, have one of the following investment grade ratings from at least one nationally recognized statistical rating organization: (i) One of the two highest investment grade ratings in the case of securities with remaining maturities of one year or less, or (ii) one of the three highest investment grade ratings in the case of securities with remaining maturities greater than one year.

3. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales will be limited so that no such transaction will be effected if, as a result, the aggregate value of Minnesota Tax-Exempt Securities held by a Fund and acquired pursuant to the order would exceed 50% of the total net assets of that Fund.

4. Purchases of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales will be effected only when the Minnesota Tax-Exempt Securities to be acquired are otherwise unavailable for purchase. If Piper Jaffray is the sole underwriter of the securities, this condition is automatically fulfilled because there is no other potential seller. When Piper Jaffray is a member

of an underwriting syndicate, U.S. Bank will observe the following procedures to determine when the securities are unavailable from other members of the syndicate. Initially, U.S. Bank will determine the aggregate number of securities that the Related Purchasers wish to acquire. Next, U.S. Bank will attempt to purchase as much of this number as possible from members of the syndicate other than Piper Jaffray. After acquiring as many securities as possible from such other members, U.S. Bank will attempt to purchase from Piper Jaffray the number of securities that the Related Purchasers wish to acquire and have been unable to obtain from such other members. The securities acquired from such other members will be allocated first to the Funds to the extent of the number of securities the Funds wish to acquire, or the number of securities the Funds are entitled to acquire based upon the relative needs of the Related Purchasers and the total number of securities purchased from such other members and from Piper Jaffray, whichever is less.

5. When the Funds purchase Minnesota Tax-Exempt Securities from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member, the Funds will not: (i) Submit designated orders to a syndicate manager that are allocated to Piper Jaffray; (ii) submit group orders to a syndicate manager that designate Piper Jaffray to receive any portion of the commission; or (iii) otherwise allocate orders to Piper Jaffray.

6. The exemption will be valid only so long as U.S. Bank and Piper Jaffray operate as separate entities and independent profit centers within the holding company framework of U.S. Bancorp, with separate officers and employees, separate capitalizations, and separate books and records. Employees of Piper Jaffray will not participate with, or seek to influence, U.S. Bank in its investment decisions as investment adviser to the Funds, other than in the normal course of sales activities of the same nature that are being carried out simultaneously with respect to unaffiliated clients of Piper Jaffray. Senior executives of U.S. Bancorp with responsibility for overseeing the operations of various subsidiaries are not precluded from exercising those functions over U.S. Bank because they oversee Piper Jaffray as well, provided that such persons will not have any involvement with respect to transactions effected pursuant to the exemption and will not attempt to influence or control the purchase of securities by the Funds from Piper

Jaffray or an underwriting syndicate of which Piper Jaffray is a member.

7. U.S. Bank and Piper Jaffray will adopt a set of guidelines for their respective personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the application and that the parties maintain arm's length relationships. Compliance officers of U.S. Bank and Piper Jaffray will periodically monitor the activities of their respective companies for compliance with such guidelines and with the conditions set forth in the application.

8. The board of directors of each Fund, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act and have no direct or indirect financial interest in the transaction (other than through ownership of Fund shares), will review, no less frequently, each purchase of Minnesota Tax-Exempt Securities directly from Piper Jaffray or from a syndicate manager of an underwriting syndicate of which Piper Jaffray is a member when the purchases are designated as group sales since the last review and will determine that the terms of such transaction were reasonable and fair to the shareholders of the Fund and did not involve overreaching of the Fund or its shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3086 Filed 2-9-00; 8:45 am]

**BILLING CODE 8010-01-M**

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42378; File No. SR-Amex-99-39]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Certain Listing Standards**

February 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934