

purpose of the National Securities Markets Improvement Act of 1996 ("NSMIA") in amending the Act to "provide more effective and less burdensome regulation." Sections 26(e) and 27(i) were added to the Act to implement the purposes of NSMIA and Congressional intent. The application of Credits to purchase payments under the Contracts should not raise any questions as to Principal Life's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recovery of Credits under the circumstances described in the Application with respect to Contracts and Future Contracts, without the loss of relief from Section 27 provided by Section 27(i).

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Principal Life's recovery of Credits as described in the Application might arguably be viewed as involving the redemption of redeemable securities for a price other than one based on the current net asset value of the Account.

9. Applicants believe that the recovery of the Credits does not violate Section 22c-1 and Rule 22c-1. Such recovery does not involve either of the harms that Rule 22c-1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. These harms resulted from the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Such backward

pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the value of outstanding fund shares.

10. Applicants submit that the recovery of Credits as described in the Application does not pose such a threat of dilution. In effecting recoveries, Principal Life will redeem interests in a Contract owner's Contract at a price determined on the basis of the current net asset value of the sub-account(s) to which the owner's Contract value is allocated. The amounts recovered will equal the Credits that Principal Life has paid out of general account assets. Except where state law requires that the full amount of the purchase payment be refunded, the Contract owners will be entitled to retain any investment gains attributable to the Credits, and the amounts of such gains will be determined on the basis of the current net asset values of the applicable sub-accounts. Under these circumstances, in Applicants' view, the recovery of the Credits does not involve dilution. Applicants further submit that the second harm that Rule 22c-1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recovery of Credits.

11. Applicants contend that, because neither of the harms that Rule 22c-1 was meant to address are found in the recovery of Credits, Rule 22c-1 and Section 22(c) should not be construed as applicable thereto. However, to avoid any uncertainty in this regard, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recover Credits under the Contracts and Future Contracts as described in the Application.

12. Applicants submit that their request for an order that applies to Future Accounts and Future Contracts that are substantially similar in all material respects to the Contracts and underwritten or distributed by Prncor or Affiliated Broker-Dealers is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors will not receive any benefit or additional protection if Applicants are required repeatedly to seek exemptive relief presenting no issue under the Act that has not already been addressed in the Application. Having Applicants file

additional applications would impair Applicants' ability to effectively take advantage of business opportunities as they arise. Applicants undertake that Future Contracts funded by the Account or by Future Accounts which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, 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 submit that, for the reasons stated in the Application, their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 00-28750 Filed 11-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24727; 812-12244]

Firststar Funds, Inc., et al.; Notice of Application

November 3, 2000.

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

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of the Application:
Applicants request an order to permit certain series of Firststar Funds, Inc. ("Firststar") to acquire all of the assets and liabilities of all of the series of Firststar Stellar Funds ("Stellar"), Mercantile Mutual Funds, Inc. ("Mercantile"), and Firststar Select Funds ("Select") (the "Reorganizations"). Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

Applicants: Firstar, Stellar, Mercantile, Select, Firstar Investment Research & Management Company, LLC ("FIRMCO"), and Firstar Bank, N.A. ("Firstar Bank").

Filing Dates: The application was filed on September 13, 2000. Applicants have agreed to file an amendment to the application 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 November 24, 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 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: Firstar, Stellar, and Mercantile, 615 East Michigan Street, Milwaukee, WI 53201-3011; Select, 431 North Pennsylvania Street, Indianapolis, IN 46204; FIRMCO, Firstar Center, 777 East Wisconsin Avenue, Suite 800, Milwaukee, WI 53202; and Firstar Bank, 425 Walnut Street, Cincinnati, OH 45202.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942-0674, or Michael W. Mundt, Branch Chief, at (202) 942-0578 (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, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. Stellar, a Massachusetts business, Select, an Ohio business trust, and Mercantile, a Maryland corporation, are registered under the Act as open-end management investment companies and are comprised of 12, 1 and 19 series respectively (the "Acquired Funds"). Firstar, a Wisconsin corporation, is registered under the Act as an open-end management investment company.

Firstar is comprised of 36 series, 27 of which will participate in the Reorganizations. Sixteen of the participating series are currently operating (the "Existing Acquiring Funds") and eleven are newly organized shell series (the "Shell Acquiring Funds," and together with the Existing Acquiring Funds, the "Acquiring Funds").¹ The Acquiring Funds and the Acquired Funds are collectively referred to as the "Funds."

2. FIRMCO is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser for Stellar, Mercantile and the Existing Acquiring Funds, and will serve as the investment adviser to the Shell Acquiring Funds. Firstar Bank, N.A. ("Firstar Bank") serves as investment adviser to Select's series, the Select REIT-Plus Fund (the "Select Fund"), and is exempt from registration under the Advisers Act. FIRMCO and Firstar Bank are subsidiaries of Firstar Corporation.

3. FIRMCO, Firstar Bank and certain of their affiliated companies that are under common control with Firstar Corporation (the "Firstar Group"), hold of record in their name, and in the names of their nominees, more than 5% (and with respect to certain Funds more than 25%) of the outstanding voting securities of certain of the Funds.² All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain of the companies of the Firstar Group may, at times, own economic interests in certain money market Funds for their own account. Some of these securities are held for the benefit of employee benefit plans for employees of Firstar Corporation and its affiliates.

4. On June 6, 7, 13, 16, July 11, 13, 20, and August 15, 2000, the boards of directors or trustees of Firstar, Stellar, Select and Mercantile (together, the "Boards"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), unanimously approved Plans of Reorganization (each a "Plan" and collectively, the "Plans") between Firstar and Stellar, Select and Mercantile. Pursuant to the Plans, each

Acquiring Fund will acquire all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund.³

5. The various Funds have multiple classes of shares. The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund class by the net asset value per share of the corresponding Acquiring Fund class, each computed as of the close of business immediately prior to the effective time of the Reorganization ("Effective Time"). Applicants state that the matching of classes was done in a way that provides the closest alignment between distribution channels and/or servicing and distribution-related expenses of each Acquired Fund and Acquiring Fund share class. In addition, Applicants represent that the rights and obligations of each class of shares of the Acquired Funds are substantially

³ The Acquired Funds and their corresponding Acquiring Funds are: (1) Stellar Treasury Fund, Mercantile Treasury Money Market Portfolio and Firstar U.S. Treasury Money Market Fund; (2) Stellar Tax-Free Money Market Fund, Mercantile Tax-Exempt Money Market Portfolio and Firstar Tax-Exempt Money Market Fund; (3) Mercantile Bond Index Portfolio, Mercantile Government & Corporate Bond Portfolio and Firstar Aggregate Bond Fund; (4) Stellar U.S. Government Income Fund, Mercantile U.S. Government Securities Portfolio and Firstar U.S. Government Securities Fund; (5) Stellar Insured Tax-Free Bond Fund, Mercantile National Municipal Bond Portfolio and Firstar National Municipal Bond Fund; (6) Mercantile Money Market Portfolio and Firstar Money Market Fund; (7) Mercantile Intermediate Corporate Bond Portfolio and Firstar Intermediate Bond Market Fund; (8) Mercantile Short-Intermediate Municipal Portfolio and Firstar Tax-Exempt Intermediate Bond Fund; (9) Mercantile Balanced Portfolio and Firstar Balanced Growth Fund; (10) Mercantile Equity Index Portfolio and Firstar Equity Index Fund; (11) Mercantile Growth & Income Equity Portfolio and Firstar Growth & Income Fund; (12) Mercantile Growth Equity Portfolio and Firstar Growth Fund; (13) Mercantile Small Cap Equity Portfolio and Firstar Emerging Growth Fund; (14) Mercantile International Equity Portfolio and Firstar Core International Equity Fund; (15) Stellar Fund and Firstar Balanced Income Fund; (16) Stellar Capital Appreciation Fund and Firstar MidCap Index Fund; (17) Mercantile Conning Money Market Portfolio and Firstar Conning Money Market Fund; (18) Mercantile Missouri Tax-Exempt Bond Portfolio and Firstar Missouri Tax-Exempt Bond Fund; (19) Mercantile Equity Income Portfolio and Firstar Equity Income Fund (shell); (20) Mercantile Small Cap Equity Index Portfolio and Firstar Small Cap Index Fund (shell); (21) Stellar Ohio Tax-Free Money Market Fund and Firstar Ohio Tax-Exempt Money Market Fund (shell); (22) Stellar Strategic Income Fund and Firstar Strategic Income Fund (shell); (23) Stellar Growth Equity Fund and Firstar Large Cap Growth Fund (shell); (24) Stellar Relative Value Fund and Firstar Relative Value Fund (shell); (25) Stellar Science & Technology Fund and Firstar Science & Technology Fund (shell); (26) Stellar International Equity Fund and Firstar Global Equity Fund (shell); and (27) Select Fund and Firstar REIT Fund (shell).

¹ A registration statement for the Shell Acquiring Funds was filed with the Commission on September 20, 2000, and it is anticipated that it will be declared effective on November 17, 2000.

² The Firstar Group does not hold more than 5% of the outstanding voting securities of the Mercantile Conning Money Market Portfolio and the Firstar Conning Money Market Fund. Applicants will rely on Rule 17a-8 under the Act and not the requested order for the merger of these Funds.

similar to those of the corresponding class of shares of the Acquiring Funds into which they will be reorganized.⁴ For purposes of calculating the deferred sales charges of shares of Acquiring Fund classes that charge a contingent deferred sales load, shareholders of the Acquired Funds will be deemed to have held the shares of the corresponding Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund.

6. Applicants state that the investment objectives, policies, and restrictions of each Acquiring Fund are substantially similar to those of its corresponding Acquired Fund. No sales charge will be imposed in connection with the Reorganizations. The Plans provide that Acquiring Fund shares will be distributed pro rata to the shareholders of record in the applicable Acquired Fund class, determined as of the close of business immediately prior to the Effective Time, in complete liquidation of each Acquired Fund. Applicants anticipate that the Reorganizations will be completed on or about November 27, 2000.

7. The Boards, including the Independent Directors, unanimously found that participation in the Reorganizations is in the best interest of each Fund and its shareholders and that the interests of existing shareholders of the Funds will not be diluted as a result of the Reorganizations. In approving the Reorganizations, the Boards considered, among other things, (a) the potential effect of the Reorganizations; (b) the expense ratios of the Acquiring Funds and the Acquired Funds; (c) the compatibility of the investment objectives and investment strategies of the Acquiring Funds and the Acquired Funds; (d) the terms and conditions of the Plans; and (e) the tax-free nature of the Reorganizations. FIRMCO or one of its affiliates (not the Funds) will assume all expenses incurred by the Funds in connection with the Reorganizations.

8. The Plans may be terminated by mutual written consent of the Acquiring Funds and Acquired Funds at any time prior to the Effective Time. In addition, either party may terminate the Plans in writing without liability to the terminating party if certain conditions are not satisfied prior to the Effective Time.

9. The registration statement on Form N-14 for Firstar (which contains a combined prospectus/proxy statement for each of Stellar and Mercantile) was

filed with the Commission on September 7, 2000, and the registration statement was declared effective on October 7, 2000. The combined prospectus/proxy statements contained in the N-14 registration statement were mailed to shareholders of Stellar and Mercantile on October 23, 2000. The definitive proxy materials for Select were filed with the Commission on October 6, 2000, and were sent to the shareholders of Select on October 11, 2000. A special meeting of shareholders of Select to consider the Reorganizations is to be held on November 8, 2000, and special meetings of the shareholders of Stellar and Mercantile are to be held on November 24, 2000.

10. The consummation of the Reorganizations is subject to certain conditions, including: (a) A registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the Acquired Fund shareholders will have approved the Plans; (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations; (d) the Funds will have received an opinion of counsel concerning the tax-free nature of the Reorganizations; and (e) each Acquired Fund that is not reorganizing into a corresponding Shell Acquiring Fund will have declared a dividend to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Plans that affect the application without prior Commission approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated

persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the Firstar Group holds of record more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain Funds. Because of this ownership, applicants state that these Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a-8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganizations.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including all of the Independent Directors, found that participation in the Reorganizations is in the best interests of each Fund and its shareholders and that the interests of the existing shareholders of each Fund will not be diluted as result of the Reorganizations. Applicants also note that the Reorganizations will be based on the Funds' relative net asset value.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-28795 Filed 11-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24728; File No. 812-12068]

National Life Insurance Company, et al.; Notice of Application

November 3, 2000.

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

ACTION: Notice of Application for an order under the Investment Company

⁴ The two classes of Select Fund will be reorganized into one class of Firstar REIT Fund, which, unlike the classes of Select Fund, is not subject to a distribution or shareholder servicing plan.