Dated: January 5, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–540 Filed 1–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22991; 812–10542]

Advantus Capital Management, Inc. et al.; Notice of Application

January 5, 1998.

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

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''); item 2, 5(b)(iii), and 16(a)(iii) of Form N–1A; item 3 of Form N–14; item 48 of Form N–SAR; and sections 6–07(2) (a), (b), and (c) of Regulation S–X.

Summary of Application

The order would permit applicants to enter into and materially amend investment management agreements with subadvisers without obtaining shareholder approval, and grant relief from certain disclosure requirements regarding advisory fees paid to the subadvisers.

Applicants

Advantus Series Fund, Inc. (the ''Fund'') (formerly MIMLIC Series Fund, Inc.) and Advantus Capital Management, Inc. (the ''Adviser'').

Filing Dates

The application was filed on March 5, 1997, and amended on August 22, 1997, and December 30, 1997.

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 January 26, 1998, 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 400 Robert Street North, St. Paul, MN 55101–2098.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenless, 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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is organized as a Minnesota corporation and is registered under the Act as an open-end management investment company. The Fund is comprised of twenty series (the ''Portfolios''), each of which has its own investment objectives and policies.[1] Shares of the Fund are sold only to insurance companies and their separate accounts. The Fund currently serves as the underlying investment medium for sums invested in variable annuity and variable life contracts (collectively, ''variable contracts'') issued by the Minnesota Mutual Life Insurance Company (''Minnesota Mutual''). Shares of the Portfolios are sold without sales charges or asset-based distribution charges.

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Fund pursuant to an advisory agreement between the Adviser and the Fund (the ''Advisory Agreement'').

3. Under the terms of the Advisory Agreement, the Adviser administers the business and affairs of the Fund. For all Portfolios, the Adviser furnishes the Fund, at its own expense, office space and all necessary office facilities, equipment, and personnel for servicing the investments of the Fund. The Adviser maintains all records necessary in the operation of the Fund, including records pertaining to its shareholders and investments. Each Portfolio pays the Adviser a fee for its services equal to a percentage of average daily net assets.

4. Currently, the Adviser manages certain of the Portfolios directly, and engages subadvisers (''Managers'') to manage certain of the Portfolios. Management of those Portfolios is provided by one Manager. In the future, the Adviser may allocate portions of a Portfolio's assets among multiple specialist Managers with dissimilar investment styles and security selection disciplines. The Adviser recommends selection of Managers to the Fund's board of directors (the ''Board'') based on the continuing quantitative and qualitative evaluation of their skills and proven abilities to manage assets pursuant to a specific investment style. When it employs one or more Managers to manage the investment and reinvestment of all or a portion of the assets of a Portfolio (the ''Manager of Managers Strategy''), the Adviser monitors the compliance of each Manager with the investment objectives and related policies of each Portfolio, reviews the performance of each Manager and reports periodically on performance to the Board, and recommends to the Board that the Fund terminate a particular Manager when deemed in the best interests of a Portfolio. Each Manager performs services pursuant to a written agreement (the ''Portfolio Management Agreement''). Managers' fees are paid by the Adviser out of its fees from the Portfolios at rates negotiated with the Managers by the Adviser.

5. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 under the Act to permit the Fund and the Adviser to enter into and materially amend Portfolio Management Agreements without obtaining shareholder approval (*i.e.*, approval of the variable contract owners). For each Portfolio, applicants also request relief from certain disclosure requirements under the Act to disclose the following (both as a dollar amount and as a percentage of a Portfolio's net assets) (''Limited Fee Disclosure''): (a) Aggregate fees paid to the Adviser and any Manager that is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of either the Fund or the Adviser other than by reason of serving as a Manager to one or more of the Portfolios (an ''Affiliated Manager''); and (b) aggregate fees paid to Managers other than Affiliated Managers.

[1] Applicants also request relief with respect to: (a) any series of the Fund organized in the future; and (b) all subsequently registered open-end management investment companies that in the future: (i) serve as funding vehicles for variable annuity or variable life insurance contracts of Minnesota Mutual; (ii) are advised by the Adviser, or any entity controlling, controlled by, or under common control with, the Adviser; (iii) use a multi-manager structure as described in the application; and (iv) comply with the conditions to the requested order (''Future Companies'').

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A require the Fund to disclose in its prospectus the investment adviser's compensation. Rule 20a–1 under the Act requires the disclosure of information in accordance with Schedule 14A under the Exchange Act. Items 22(a)(3)(iv), 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require that proxy statements for a shareholder meeting at which action is to be taken on an advisory contract, or that would establish new or higher advisory fees or expenses, disclose information regarding advisory fee rates and amounts. Item 48 of Form N–SAR provides that the Fund must disclose the rate schedule for advisory fees paid to its advisers, including the Managers. Sections 6–07(2) (a), (b), and (c) of Regulation S–X require that the Fund's financial statements contain information concerning fees paid to investment advisers, which could be interpreted to require disclosure of fees paid to the Managers. Item 3 of Form N–14, the prescribed registration form for business combinations involving open-end management investment companies, requires a fee table that shows current fees for the registrant and the company being acquired (and pro forma fees, if different).

3. Applicants state that the Fund's structure will be different from that of traditional investment companies. For the Portfolios that the Adviser does not manage directly, the Fund will employ the Manager of Managers Strategy. Applicants state that a Portfolio employing multiple Managers would give variable contract owners the opportunity to have their pooled assets divided among a group of Managers which the Adviser, based on its own analyses and experience, has determined is likely to make specific portfolio securities selections which will achieve the desired and defined objectives of the Portfolio. Applicants assert that variable contract owners also would obtain the Adviser's constant supervision of these Managers, so that the proportion of their assets subject to particular Manager styles can be reallocated (or new Managers introduced) in response to changing market conditions or Manager performance.

4. Applicants submit that investors in a Portfolio are, in effect, electing to have the Adviser manage the investment and reinvestment of a Portfolio's assets or select one or more Managers best suited to achieve that Portfolio's investment objectives. Part of that investor's investment decision, applicants argue, is a decision to have the selection of Managers made by a professional management organization, such as the Adviser, with substantial experience in making such evaluations and selections. Applicants state that Managers are concerned only with selection of portfolio investments in accordance with a Portfolio's investment objectives and policies, and do not have broader supervisory, management, or administrative responsibilities with respect to a Portfolio or the Fund. Thus, applicants believe that the role of the Managers, from the perspective of the investor, is comparable to that of the individual portfolio managers employed by other investment company advisory firms.

5. The Fund's prospectus and statement of additional information will include all required information concerning each Manager, except as modified by the proposed Limited Fee Disclosure. If a new Manager is retained, the Fund will furnish variable contract owners, within 60 days, all the information that would have been provided in a proxy statement, provided that information regarding fees would be modified by the proposed Limited Fee Disclosure.

6. Applicants contend that requiring shareholder approval of Portfolio Management Agreements places costs and burdens on the Fund and its shareholders that do not advance shareholder interests. Applicants additionally assert that variable contract owners are adequately protected by their voting rights concerning the Investment Advisory Agreement between the Fund and the Adviser, as well as by the responsibilities borne by the Adviser and the Board with respect to the Managers and the Portfolio Management Agreements.

7. Applicants note that the investment advisory fees paid to the Adviser will be disclosed in the Fund's prospectus and statement of additional information. Applicants contend that each investor will, therefore, be able to determine whether its cost for investment advisory services, including the selection and supervision of Managers (and the reallocation of assets among multiple Managers from time to time, if and where applicable), is competitive with the services and costs which the investor could obtain elsewhere. Applicants note that some Managers use a ''posted'' rate schedule to set their fees, particularly at lower asset levels. Based upon the Adviser's extensive experience in dealing with Managers and upon the Adviser's discussions with prospective Managers, applicants believe that some organizations will be unwilling to serve as Managers at any fee rate other than their ''posted'' fee rates, unless the rates negotiated for the Portfolios are not publicly disclosed. Applicants believe that forcing disclosure of Managers' fees would therefore tend to deprive the Adviser of its bargaining power while producing no benefit to variable contract owners, since the fees they pay would not be affected.

8. Section 6(c) of the Act 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 submit that the requested relief meets this standard.

Applicants' Conditions

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

1. The Fund will disclose in its registration statement the Limited Fee Disclosure.

2. The Adviser will not enter into a Portfolio Management Agreement with an Affiliated Manger without that agreement, including the compensation to be paid thereunder, being approved by the variable contract owners with assets allocated to any subaccount of a separate account for which the applicable Portfolio serves as a funding medium.

3. At all times, a majority of the Board will continue to be persons each of whom is not an ''interested person'' of the Fund as defined in Section 2(a)(19) of the Act (''Independent Directors''), and the nomination of new or additional Independent Directors will continue to be at the discretion of the then existing Independent Directors.

4. Independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors of the Fund. The selection of such counsel will be within the discretion of the Independent Directors.

5. The Adviser will provide the Board, no less frequently than quarterly, information about the Adviser's profitability on a per-Portfolio basis. Such information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

6. Whenever a Manager is hired or terminated, the Adviser will provide the board information showing the expected impact on the Adviser's profitability.

7. When a Manager change is proposed for a Portfolio with an Affiliated Manager, the Fund's directors, including a majority of the Independent Directors, will make a separate finding, reflected in the Fund's board minutes, that the change is in the best interests of the Portfolio and variable contract owners with assets allocated to any sub-account of a separate account for which a Portfolio serves as a funding medium and does not involve a conflict of interest from which the Adviser or the Affiliated Manger derives an inappropriate advantage.

8. Before a Portfolio may rely on the order requested hereby, the operation of the Portfolio in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, pursuant to voting instructions provided by variable contract owners with assets allocated to any sub-account of a registered separate account for which a Portfolio serves as a funding medium or, in the case of a new Portfolio whose shareholders (*i.e.*, separate accounts) purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 11 below, by the sole initial shareholder(s) before offering shares of that new Portfolio to variable contract owners through a separate account.

9. The Adviser will provide general management services to the Fund and its Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's securities portfolio, and, subject to review and approval by the Board, will: (a) set the Portfolios' overall investment strategies; (b) select Managers; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Managers; (d) monitor and evaluate the performance of Managers; and (e) ensure that the Managers comply with the Portfolio's investment objectives, policies, and restrictions.

10. Within 60 days of the hiring of any new Manager, variable contract owners with assets allocated to any registered separate account for which the Fund serves as a funding medium will be furnished all information about a new Manager or Portfolio Manager Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager. The Adviser will meet this condition by providing such variable contract owners with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act.

11. The Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, the Fund will hold itself out to the public as employing the ''Manager of Managers Strategy'' described in the application. The prospectus relating to the Fund will prominently disclose that the Adviser has ultimate responsibility for the investment performance of each Portfolio employing subadvisers due to its responsibility to oversee the Managers and recommend their hiring, termination, and replacement.

12. No director or officer of the Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director or officer) any interest in a Manager, except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or any entity that controls, is controlled by, or is under common control with a Manager.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–537 Filed 1–8–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39505; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.

December 31, 1997.

I. Introduction

On December 30, 1997, the National Association of Securities Dealers, Inc. (''NASD''), on behalf of itself and the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposal to extend the operation of a joint transaction reporting plan (''Plan'') [1] for Nasdaq/National Market (''Nasdaq/NM'') (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.[2] The proposal would extend the effectiveness of the Plan, as amended by Revised Amendment No. 9, as defined in footnote 3, through June 30, 1998.[3] The

[1] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated December 30, 1997 (''December 1997 Extension Request''). The December 1997 Extension Request also requests the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934, as amended (''Act''). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a ''limited participant'' and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc. (''Amex'') was a participant but withdrew its participation from the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 8.

[3] On March 18, 1996, the Commission solicited comment on a revenue sharing agreement among the Participants. *See* March 1996 Extension Order, *infra* note 8. Thereafter the Participants submitted

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