

Information Processor (SIP) files and amends its SIP registration form. The information filed with the Commission pursuant to Rule 11Ab2-1 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Securities Exchange Act of 1934 (Act) before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is an SIP that engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effective or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The Federal securities laws require that before the Commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission. The Securities Information Automation Corporation (SIAC) and the Nasdaq Stock Market, Inc. (Nasdaq). SIAC and Nasdaq are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information. Accordingly, the annual reporting and recordkeeping burden for Rule 11Ab2-1 and Form SIP is 400 hours. This annual reporting and recordkeeping burden does not include the burden hours or cost of amending a Form SIP because the Commission has already overstated the compliance burdens by assuming that the Commission will receive one initial registration pursuant to Rule 11Ab2-1 on Form SIP a year.

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 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.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: January 28, 1999.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-2892 Filed 2-5-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23674; 812-11484]

### Gradison Growth Trust, et al.; Notice of Application February 2, 1999

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

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

**SUMMARY OF THE APPLICATION:** The requested order would permit the implementation, without prior shareholder approval, of a new investment subadvisory agreement ("New Agreement") for a period commencing on the later of the date on which the sale of a controlling interest of the subadviser is consummated or the date the requested order is issued and continuing until the New Agreement is approved or disapproved by shareholders of the investment company (but in no event later than March 22, 1999) ("Interim Period"). The order also would permit, following shareholder approval, the payment to the subadviser of all fees it earns under the New Agreement during the Interim Period.

**APPLICANTS:** Gradison Growth Trust ("Trust"), McDonald Investments, Inc. ("Adviser"), and Blairlogie Capital Management ("Subadviser").

**FILING DATES:** The application was filed on January 27, 1999. Applicants have agreed to file an amendment, the

substance of which is included 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 February 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 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Kirkpatrick & Lockhart, Attn: Robert J. Zutz, Esq. or Francine J. Rosenberger, Esq., 1800 Massachusetts Avenue, NW, Suite 200, Washington, D.C. 20036.

**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 SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942-8090).

### Applicants' Representations

1. The Trust is an Ohio business trust that is registered under the Act as an open-end management investment company. The Trust currently offers four portfolios, one of which is the International Fund ("Fund").

2. The Adviser is registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves an investment adviser to the Fund pursuant to an investment advisory agreement. The Adviser is a wholly-owned subsidiary of KeyCorp.

3. The Subadviser, which is organized as a Scottish limited partnership, is registered under the Advisers Act. The Subadviser serves as a subadviser to the Fund pursuant to an investment subadvisory agreement with the Adviser. The Adviser pays the Subadviser out of the fee that the Adviser receives from the Fund.

4. On October 24, 1998, PIMCO Advisors LP ("PIMCO"), a general partner of the Subadviser, and certain of

PIMCO's affiliates entered into an agreement pursuant to which they will sell 75% general partner interest in the Subadviser to Alleghany Asset Management, Inc. ("AAM") and certain of its affiliates (the "Transaction"). Upon consummation of the Transaction, the Subadviser will become a subsidiary of AAM, which in turn is the investment management of Alleghany Corporation. Applicants expect consummation of the Transaction on or about March 1, 1999.

5. Applicants state that the Transaction may result in an assignment, and thus termination, of the existing subadvisory agreement between the Adviser and the Subadviser. Applicants request an exemption to permit the implementation, during the Interim Period and prior to obtaining shareholder approval, of the New Agreement. 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<sup>1</sup> and continuing until the New Agreement is approved or disapproved by Fund shareholders (but in no event later than March 22, 1999).<sup>2</sup> The requested order also would permit the Subadviser to receive all fees earned under the New Agreement during the Interim Period, subject to approval of the New Agreement by Fund shareholders. Applicants state that the New Agreement will contain substantially the same terms and conditions as the subadvisory agreement most recently approved by the Fund's shareholders, except for changes to the commencement and termination dates.

6. On September 14 and November 6, 1998, the Trust's Board of Trustees ("Board") met to evaluate whether the

terms of the New Agreement are in the best interests of the Fund and its shareholders. The Board, including a majority of the trustees who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the Act ("Independent Trustees"), approved the New Agreement and voted to recommend that the Fund's shareholders approve the New Agreement. Proxy materials for the shareholders meeting were mailed on February 1, 1999.

7. Fees earned by the Subadviser under the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated financial institution. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) to the Subadviser upon approval of the New Agreement by the Fund's shareholders; or (ii) to the Fund, if the Interim Period has ended and the Fund's shareholders have not approved the New Agreement. Before any such release is made, the Board will be notified.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant 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 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 may result in an assignment of the existing subadvisory agreement and that such agreement will terminate according to its terms.

2. Rule 15a-4 under the Act provides, in relevant part, that if an investment advisory contract with a registered investment company is terminated by an assignment, an investment adviser may act as such for the company for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approved by that company's

board of directors, including a majority of the non-interested directors; (ii) 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 (iii) 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 they may not be entitled to rely on rule 15a-4 because the Subadviser may be deemed to receive a benefit in connection with the Transaction.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with both 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 Fund. Applicants assert that there is insufficient time to obtain shareholder approval of the New Agreement before the Transaction is consummated. Applicants further assert that the requested relief would prevent any disruption in the delivery of investment subadvisory services to the Fund during the period following consummation of the Transaction.

5. Applicants represent that, under the New Agreement during the Interim Period, the Fund will receive substantially identical investment subadvisory services, provided in substantially the same manner, as it received prior to the consummation of the Transaction. Applicants state that, in the event of any material change in personnel of the Subadviser providing services pursuant to the New Agreement during the Interim Period, the Subadviser will apprise and consult the Board to assure that the Board, including a majority of the independent Trustees, is satisfied that the services provided by the Subadviser will not be diminished in scope and quality.

6. Applicants note that the fees payable to the Subadviser under the New Agreement during the Interim Period will be at the same rate as the fees paid under the subadvisory agreement most recently approved by the Fund's shareholders.

<sup>1</sup> Applicants state that if the consummation of the Transaction precedes the issuance of the requested order, the Subadviser will serve after the consummation of the Transaction and prior to the issuance of the order in a manner consistent with its fiduciary duty to provide investment subadvisory services to the Fund even though approval of the New Agreement has not yet been secured from the Fund's shareholders. Applicants submit that, in such an event, the Subadviser will be entitled to receive from the Adviser, from the date of the consummation of the Transaction until the issuance of the order, no more than the actual out-of-pocket cost to the Subadviser for providing investment subadvisory services to the Fund.

<sup>2</sup> On October 23 1998, the Adviser's parent company was acquired by KeyCorp. In anticipation of that acquisition, Applicants obtained an order from the Commission to permit the implementation, without shareholder approval, of new investment advisory and subadvisory agreements with the Fund for a period of up to 150 days. See *Gradison-McDonald Cash Reserve Trust, Investment Company Act Rel. Nos. 23442 (Sept. 22, 1998) (notice) and 23484 (Oct. 14, 1998) (order) ("Prior Order")*. Under the Prior Order, the Fund must hold a shareholder meeting no later than March 22, 1999.

### Applicants' Conditions

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

1. The New Agreement will have substantially the same terms and conditions as the subadvisory agreement most recently approved by the Fund's shareholders, except for the commencement and termination dates.

2. Fees earned by the Subadviser under the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated financial institution. The escrow agent will release those fees (including any interest earned on those fees): (i) to the Subadviser upon approval of the New Agreement by the Fund's shareholders; or (ii) to the Fund, if the Interim Period has ended and the Fund's shareholders have not approved the New Agreement.

3. The Fund will promptly schedule a meeting of its shareholders to vote on approval of the New Agreement, which will be held within the Interim Period (but in no event later than March 22, 1999).

4. The Adviser and/or one or more of its affiliates or subsidiaries or the Subadviser, but not the Fund, will pay the cost of preparing and filing the application. The Adviser and/or one or more of its affiliates or subsidiaries, but not the Fund, will pay the costs relating to the solicitation of shareholder approval of the New Agreement.

5. The Subadviser will take all appropriate actions to ensure that the scope and quality of subadvisory and other services provided to the Fund during the Interim Period under the New Agreement will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services provided under the subadvisory agreement most recently approved by the Fund's shareholders. In the event of any material change in personnel providing services pursuant to the New Agreement during the Interim Period, the Subadviser will apprise and consult the Board to assure that the Board, including a majority of the Independent Trustees, is satisfied that the services provided by the Subadviser 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. 99-2932 Filed 2-5-99; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23673; 812-11406]

#### Horace Mann Mutual Funds et al.; Notice of Application

February 1, 1999.

**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 and rule 18f-2 under the Act, as well as from certain disclosure requirements.

**SUMMARY OF THE APPLICATION:** Applicants, Horace Mann Mutual Funds (the "Company") and Wilshire Associates Incorporated (the "Adviser"), request an order that would (a) permit applicants to enter into and materially amend subadvisory agreements without shareholder approval and (b) grant relief from certain disclosure requirements.

**FILING DATE:** The application was filed on November 18, 1998. 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 February 24, 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, N.W., Washington, D.C. 20549. Applicants, c/o Christine A. Scheel, Esq., Vedder, Price, Kaufman & Kammholz, 222 North LaSalle Street, Chicago, Illinois 60601-1003.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, 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 from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942-8090).

#### Applicant's Representations

1. The Company, a Delaware business trust, is registered under the Act as an open-end management investment company. The Company is currently comprised of seven series (each a "Fund" and collectively, the "Funds"), each of which has its own investment objective, policies and restrictions.<sup>1</sup> The shares of the Funds serve as funding vehicles for variable annuity contracts offered through separate accounts of the Horace Mann Life Insurance Company ("Horace Mann Life"). Horace Mann Life is a wholly-owned indirect subsidiary of Horace Mann Educators Corporation. The Adviser, a California corporation, will serve as investment adviser to the Funds beginning on March 1, 1999.<sup>2</sup> The Adviser is registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Adviser will serve as investment adviser to the Company pursuant to an investment advisory agreement between the Company and the Adviser that was approved by the Board of Trustees of the Company ("Board"), including a majority of the Trustees who are not "interested persons," as defined in section 2(a)(19) of the 1940 Act ("Independent Trustees"), and the shareholders of the Funds ("Investment Advisory Agreement"). Under the Investment Advisory Agreement, the Adviser has overall general supervisory responsibility for the investment program of the Funds and, subject to the general supervision of the Board, has authority to select and contract with one or more subadvisers (each a "Portfolio Manager" and collectively, "Portfolio Managers") to provide one or more Funds with portfolio management services. Each Portfolio Manager will be an investment adviser registered under the Advisers Act and will perform services pursuant to a written agreement with the Adviser (the "Sub-Advisory

<sup>1</sup> Applicants also request relief with respect to future series of the Company and all future registered open-end management investment companies that are (a) advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser, and (b) operate in substantially the same manner as the Funds and comply with the terms and conditions contained in the application ("Future Funds"). The Company is the only existing investment company that currently intends to rely on the order.

<sup>2</sup> The Funds currently are advised by Horace Mann Investors, Inc., an investment adviser registered under the Investment Advisers Act of 1940.