

approximately \$81 million per year.⁹ Commission staff estimates, based on conversations with representatives of the fund industry, that funds would spend at least half of this amount (\$40.5 million) in any case to preserve the books and records that are necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns.¹⁰

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections 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, Mail Stop 0-4, 450 5th Street, NW., Washington, DC 20549.

Dated: February 8, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-3770 Filed 2-16-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23689; File No. 812-11132]

American Skandia Life Assurance Corporation, et al.; Notice of Application

February 10, 1999.

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

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities, and pursuant to Sections 6(c) and 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

Summary of Application: Applicants request an order to permit certain registered unit investment trusts to substitute shares of certain registered open-end investment companies for shares of certain registered investment companies currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

Applicants: American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B (Class 1) ("Account B-1"), American Skandia Life Assurance Corporation Variable Account B (Class 2) ("Account B-2"), American Skandia Life Assurance Corporation Variable Account B (Class 3) ("Account B-3," together with Account B-1 and Account B-2, "Account B") and American Skandia Marketing, Incorporated ("ASM").

Filing Date: The application was filed on May 4, 1998, and amended and restated on November 6, 1998 and January 14, 1999.

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 Secretary of the Commission 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 March 5, 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street,

NW., Washington, DC 20549.

Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484, Attention: Scott K. Richardson, Esq.

FOR FURTHER INFORMATION CONTACT:

Ethan D. Corey, Senior Counsel, at (202) 942-0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942-0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION:

The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

Applicants' Representations

1. ASLAC is a stock life insurance company admitted to do business as an insurer in the fifty states and the District of Columbia. ASLAC offers fixed and variable annuities sold to individuals and groups (the "Annuities") as well as variable life insurance contracts.

2. ASLAC is a wholly-owned subsidiary of American Skandia Investment Holding Corporation, which is an indirect wholly-owned subsidiary of Skandia Insurance Company Ltd., a corporation organized under the laws of the Kingdom of Sweden.

3. Account B-1, a separate account established by ASLAC, is registered with the Commission as a unit investment trust. ASLAC currently offers seven flexible premium deferred variable annuity contracts that are funded by Account B-1: (a) American Skandia Advisors Plan ("ASAP") including the LifeVest Personal Security Annuity ("PSA"); (b) American Skandia Advisors Plan II ("ASAPII"); (c) American Skandia XTra Credit ("ASXT") and Stagecoach Extra Credit Variable Annuity ("Stagecoach XT"); (d) American Skandia LifeVest ("ASL") and Stagecoach Variable Annuity Flex ("Stagecoach ASL"); (e) American Skandia Protector ("ASPro"); (f) Alliance Capital Navigator Annuity ("Alliance"); and (g) Wells Fargo Stagecoach Variable Annuity Plus ("Stagecoach VA Plus") including Wells Fargo Stagecoach ("Stagecoach").

4. Account B-2, a separate account established by ASLAC, is registered with the Commission as a unit investment trust. Account B-2 funds one flexible premium deferred variable annuity contract currently offered by ASLAC (American Skandia Advisors Choice ("Advisors Choice")) and one contract that is no longer offered but continues to accept subsequent

⁹ This estimate is based on the annual cost per dollar of net assets of the average fund as applied to the net assets of all funds.

¹⁰ Several of the fund industry representatives surveyed indicated that the records required to be preserved and maintained by rule 31a-2 also are required for accounting, tax return and state reporting requirements. In the experience of two investment companies, the major portion of the cost, approximately 60 percent, is for labor related costs and approximately 40 percent is for storage related costs, however these companies were not able to allocate the percentage of costs attributable to rent or equipment.

premium payments (American Skandia Advisors Choice2000 ("Advisors Choice2")).

5. Account B-3, a separate account established by ASLAC, is registered with the Commission as a unit investment trust. Account B-3 funds two flexible premium deferred variable annuity contracts currently offered by ASLAC: American Skandia Impact ("ASImpact"); and American Skandia Galaxy III variable annuity ("Galaxy3") (collectively the "Account B-3 Annuities").

6. ASM is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ASM is 100% owned by American Skandia Investment Holding Corporation, which is also the direct parent of ASLAC. ASM's primary business is that of being principal underwriter-distributor of variable annuities and market value adjusted fixed annuity contracts issued by ASLAC as well as variable life insurance policies issued by ASLAC.

7. The Annuities are offered in all 50 states and the District of Columbia. The Annuities may be issued under retirement plans which qualify for federal tax benefits under Sections 401 and 408 of the Internal Revenue Code of 1986, as amended (the "Code") as individual retirement accounts and under other retirement plans which do not qualify under the Code.

8. Neuberger Berman Advisers Management Trust ("AMT") is an open-end management investment company of the series type registered under the 1940 Act. It currently offers the Neuberger Berman AMT Partners portfolio ("Partners portfolio") to Account B-1, Account B-2 and Account B-3. Neuberger Berman Management, Inc. is the investment manager for the Partners portfolio.

9. The Alliance Variable Products Series Fund, Inc. ("Alliance") is an open-end management investment company of the series type registered under the 1940 Act. It currently offers the following fifteen series portfolios to Sub-accounts of Account B-1: U.S. Government/High Grade Securities Portfolio, Total Return Portfolio, International Portfolio, Short-Term Multi-Market Portfolio, Growth and Income Portfolio, Premier Growth Portfolio, Money Market Portfolio, North American Government Income Portfolio, Global Dollar Portfolio, Utility Income Portfolio, Global Bond Portfolio, Growth Investors Portfolio, Conservative Portfolio, Growth, and Worldwide Privatization Portfolio. Alliance Capital Management L.P. is the investment

manager for each of the portfolios. Dempsey & Company International Limited is the sub-advisor to the Global Bond Portfolio.

10. The Alger American Fund is a diversified, open-end management investment company of the series type registered under the 1940 Act. It currently offers the following three portfolios through one or more of the Account B-1, Account B-2 and Account B-3 Annuities: Alger American Small Capitalization Portfolio, Alger American Growth Portfolio and Alger American MidCap Growth Portfolio. Fred Alger Management, Inc. is the investment manager of each of the portfolios.

11. American Skandia Trust ("AST") is an open-end diversified management investment company of the series type registered under the 1940 Act. AST currently is comprised of 29 series portfolios. American Skandia Investment Services, Inc. ("ASISI") is the investment manager for each of the portfolios.

12. ASISI currently engages the following subadvisers to subadvise the accompanying AST portfolios: Janus Capital Corporation—AST JanCap Growth, AST Janus Overseas Growth and AST Janus Small Cap Growth; Lord Abbett and Co.—AST Lord Abbett Growth & Income and AST Lord Abbett Small Cap Value; Federated Investment Counseling—AST Federated High Yield; J.P. Morgan Investment Management Inc.—AST Money Market; T. Rowe Price Associates, Inc.—AST T. Rowe Price Asset Allocation, AST T. Rowe Price International Equity, AST T. Rowe Price Natural Resources, AST T. Rowe Price International Bond and AST T. Rowe Price Small Company Value; Founders Asset Management, Inc.—AST Founders Passport; INVESCO Trust Company—AST INVESCO Equity Income; Pacific Investment Management Company—AST PIMCO total Return Bond and AST PIMCO Limited Maturity Bond; Oppenheimer Funds, Inc.—AST Oppenheimer Large Cap Growth; Putnam Investment Management, Inc.—AST Putnam Value Growth and Income and AST Putnam International Equity; American Century Investment Management, Inc.—AST Twentieth Century Strategic Balanced and AST Twentieth Century International Growth; Cohen & Steers Capital Management, Inc.—AST Cohen & Steers Realty; Stein Roe & Farnham Incorporated—AST Stein Roe Venture; Bankers Trust Company—AST Bankers Trust Enhanced 500; Marsico Capital Management, LLC—AST Marsico Capital Growth; Neuberger Berman Management Inc.—AST Neuberger Berman Mid-Cap Value and AST

Neuberger Berman Mid-Cap Growth; Scudder Kemper Investments, Inc.—AST Kemper Small Cap Growth.

13. ASLAC has expressly reserved the right, on its own behalf and on behalf of Account B, to eliminate Sub-accounts, combine two or more Sub-accounts, or substitute one or more new underlying mutual funds or portfolios for others in which one or more Sub-accounts are invested.

14. ASLAC, on its own behalf and on behalf of Account B, proposes to exercise its contractual right to eliminate the Partners portfolio as an investment option under the following contracts: Account B-1 Contracts (PSA, ASAP, ASAPII, ASXT, ASL, and ASPro); Account B-2 Contracts (Advisors Choice and Advisors Choice2000); and Account B-3 Contracts (ASImpact). ASLAC proposes to substitute shares of AST Neuberger Berman Mid-Cap Value portfolio ("MicCap portfolio"), a portfolio of AST that is sub-advised by Neuberger Berman Management Inc., for shares of the Partners portfolio ("Substitution No. 1"). The Mid-Cap portfolio of American Skandia Trust is modeled after the Partners portfolio. The two portfolios have identical managers and the Mid-Cap portfolio is managed in a manner substantially similar to the Partners portfolio. The management fee of the MidCap portfolio is slightly higher than the management fee of the Partners portfolio (0.90% compared to 0.80%). However, the management fee schedule for the MicCap portfolio declines from 0.90% to 0.85% when total portfolio assets exceed \$1 billion. Other expenses of the MidCap portfolio are higher than those of the Partners portfolio (0.25% compared to 0.06%).

15. ASLAC also proposes, on its behalf and on behalf of Account B-1, to replace certain portfolios of Alliance with certain portfolios of AST as investment options under the Alliance Capital Navigator contract ("Substitution No. 2").

16. ASLAC proposes to substitute shares of the following AST portfolios for shares of the following Alliance portfolios. (a) AST PIMCO Total Return Bond portfolio ("Total Return Bond portfolio") for the U.S. Government/High Grade Securities portfolio; (b) AST T. Rowe Price Asset Allocation portfolio ("Asset Allocation portfolio") for the Total Return, Growth Investors and Conservative Investors portfolios; (c) AST T. Rowe Price International Equity portfolio ("T. Rowe Price International Equity portfolio") for the International portfolio; (d) AST Putnam International Equity portfolio ("Putnam International Equity portfolio") for the Worldwide

Privatization portfolio; (e) AST PIMCO Limited Maturity Bond portfolio ("Limited Maturity portfolio") for the Short Term Multi-Market portfolio; (f) AST Money Market portfolio for the Money Market portfolio; (g) AST T. Rowe Price International Bond portfolio ("International Bond portfolio") for the North American Government Income, Global Dollar Government and Global Bond portfolios; (h) AST JanCap Growth portfolio ("JanCap Growth portfolio") for the Growth and Premier Growth portfolios; and (i) AST Lord Abbett Growth & Income portfolio ("Lord Abbett Growth & Income portfolio") for the Growth and Income and Utility Income portfolios.

17. The investment objective of the Total Return Bond portfolio is to maximize total return, consistent with preservation of capital by investing at least 65% of its assets in securities which may be issued by domestic or foreign entities and denominated in U.S. dollars or foreign currencies, including securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, corporate debt securities and corporate commercial paper. The investment objective of the U.S. Government/High Grade Securities portfolio is high current income consistent with preservation of capital by investing principally in a portfolio of U.S. Government-issued or guaranteed obligations and other investment grade debt securities. The year to date total return of the Total Return Bond portfolio has been 3.42% compared to 2.96% for the U.S. Government/High Grade Securities portfolio. The total return of the Total Return Bond portfolio over the past 12 months has been 6.63% compared to 5.36% for U.S. Government/High Grade Securities portfolio. The total return of the Total Return Bond portfolio over the past three years has been 6.88% compared to 6.02% for the U.S. Government/High Grade Securities portfolio. The total annual expenses for the Total Return Bond portfolio are 0.86% (0.65% management fee and 0.21% other expenses) compared to 0.92% (0.54% management fee and 0.38% other expenses) for the U.S. Government/High Grade Securities portfolio. The U.S. Government/High Grade Securities portfolio has a 0.06% management fee waiver in place that, if eliminated, would increase total annual expenses to 0.98%.

18. The investment objective of the Asset Allocation portfolio is a high level of total return by investing primarily in a diversified group of fixed income and equity securities. The investment objective of the Total Return portfolio is

a high return through a combination of current income and capital appreciation by investing in U.S. Government and agency obligations, corporate fixed-income obligations and preferred and common stocks. The investment objective of the Growth Investors portfolio is to achieve the highest total return consistent with the advisor's determination of reasonable risk by allocating varying portions of its assets among equity securities and fixed income obligations. The investment objective of the Conservative Investors portfolio is to achieve a high total return without, in the view of the advisor, undue risk of principal by allocating varying portions of its assets among investment grade, publicly traded fixed-income securities, money market instruments and publicly traded common stocks and other equity securities. In 1995, total return of the Asset Allocation portfolio was 21.94% compared to 21.64% for the Total Return portfolio, 18.79% for the Growth Investors portfolio, and 15.36% for the Conservative Investors portfolio. In 1996, total return of the Asset Allocation portfolio was 11.54% compared to 13.55% for the Total Return portfolio, 6.65% for the Growth Investors portfolio and 2.32% for the Conservative Investors portfolio. In 1997, total return of the Asset Allocation portfolio was 16.74, compared to 19.41% for the Total Return portfolio, 14.71% for the Growth Investors portfolio and 9.66% for the Conservative Investors portfolio. The total annual expenses for the Asset Allocation portfolio are 1.13% (0.85% management fee and 0.28% other expenses). The total annual expenses for the Total Return portfolio are 0.95% (0.46% management fee and 0.49% other expenses). However, the Total Return portfolio has a .16% management fee waiver. The total annual expenses for the Growth Investors portfolio are 0.95% (0.00% management fee and 0.95% other expenses). However, the entire 0.75% management fee of the Growth Investors portfolio currently is being waived. Furthermore, the Portfolio currently has 0.15% of other expenses being reimbursed. Without the management fee waiver and expense reimbursement, total portfolio expenses would be 1.85%. The total annual expenses for the Conservative Investors portfolio are 0.95% (0.30% management fee and 0.65% other expenses). However, the Conservative Investors portfolio currently has a waiver of the management fee equal to 0.45%. If the management fee waiver were to be

discontinued or partially waived, total annual expenses would increase to as much as 1.40%.

19. The investment objective of both the International portfolio and the T. Rowe Price International Equity Portfolio is to seek total return on assets from long-term growth of capital with income as a secondary objective. Both portfolios invest primarily in equity securities of non-U.S. companies and tend to concentrate geographically in similar regions, including the Far East, Western Europe, Australia and Canada. Total return has been 9.54% (1995), 12.55% (1996) and -0.06% (1997) for the T. Rowe Price International Equity portfolio compared to 8.32% (1995), 5.73% (1996) and 1.88% (1997) for the International portfolio. The total annual expenses for the T. Rowe Price International Equity portfolio is 1.26% (1.00% management fee and .26% other expenses); total annual expenses for the International portfolio are 0.95% (0.04% management fee and 0.91% other expenses). However, the International portfolio has a voluntary waiver of the management fee equal to 0.96%.

20. The Worldwide Privatization portfolio seeks long term capital appreciation by investing at least 65% of its assets in equity securities that are issued by enterprises that are undergoing privatization in both established and developing economies. The Putnam International Equity portfolio also seeks capital appreciation by investing primarily in equity securities of non-U.S. companies. Total return for the Putnam International Equity portfolio was 16.50% in 1997, 8.10% in 1996 and 8.46% in 1995. For the first quarter of 1998, total return was 17.52%. Total return for the Worldwide Privatization portfolio was 9.20% in 1997, 16.84% in 1996 and 9.32% in 1995. For the first quarter of 1998, total return was 15.38%. The total annual expenses for the Putnam International Equity portfolio are 1.15% (0.88% management fee and 0.27% other expenses); the total annual expenses for the Worldwide Privatization portfolio are 0.95% (0.10% management fee and 0.85% other expenses). However, the adviser to the Worldwide Privatization portfolio currently is waiving 0.90% of its management fee, and reimbursing 0.10% of the portfolio's other expenses.

21. The investment objective of both the Short-Term Multi-Market portfolio and the Limited Maturity portfolio is to seek high current income with preservation of capital. Both invest in a diversified portfolio of high quality debt securities of varying maturates with remaining maturates of not more than three years. Both portfolios invest in

debt securities denominated in U.S. dollars as well as foreign currencies, meaning both U.S. and foreign debt securities can be held. Since May 1995 (the inception of the Limited Maturity portfolio), the total return of the two portfolios has been similar in the aggregate. Total return for the Limited Maturity portfolio was 5.95% in 1997 and 6.70% over the last 12 months; total return for the Short-Term Multi-Market portfolio was 3.13% in 1997 and 4.11% over the last 12 months. The total annual expenses for the Limited Maturity portfolio are 0.88% (0.65% management fee and 0.24% other expenses) while those for the Short-Term Multi-Market portfolio are 0.95% (0.00% management fee and 0.95% other expenses). Furthermore, the investment manager is waiving all of its management fee of the Short-Term Multi-Market Portfolio. Without this management fee waiver, the management fee would be 0.55%. In addition, other expenses are being partially reimbursed. Other expenses without reimbursement would be 1.54%.

22. The investment objectives and policies of both the Alliance Money Market portfolio and the AST Money Market portfolio are to seek high current income and maximum liquidity. The AST Money Market portfolio will only invest in obligations of financial institutions with more than \$2 billion of assets, while the Alliance Money market portfolio can invest in institutions with only \$1 billion of assets. The total return of the AST Money Market portfolio has been 2.18% year to date and 3.79%, 3.72%, and 3.26% for the last one, three and five year periods. The total return of the Alliance Money Market portfolio has been 2.11% year to date, and 3.68%, 3.48% and 2.94% for the last one, three and five year periods. The total annual expenses for the AST Money Market portfolio 0.60% (0.45% management fee and 0.15% other expenses). The total annual expenses for the Alliance Money Market portfolio are 0.69% (0.50% management fee and 0.19% other expenses). The adviser currently is waiving a portion of the management fee equal to 0.05% and is reimbursing a portion equal to 0.04% of the other expenses of the AST Money Market Fund.

23. The International Bond portfolio seeks to provide high current income and capital appreciation by investing in high-quality, non dollar-denominated government and corporate bonds outside the United States. The North American Government Income portfolio seeks the highest level of current income, consistent with what the

adviser considers to be prudent investment risk, that is available from a portfolio of debt securities issued or guaranteed by the governments of the United States, Canada, Mexico and Argentina, their political subdivisions (including Canadian Provinces but excluding States of the United States), agencies, instrumentalities or authorities, The Global Dollar Government portfolio seeks a high level of current income. Its secondary investment objective is capital appreciation. In seeking to achieve these objectives, the portfolio will invest at least 65% of its total assets in fixed income securities issued or guaranteed by foreign governments. The Global Bond portfolio seeks a high level of return from a combination of current income and capital appreciation by investing in a globally diversified portfolio of high quality debt securities denominated in U.S. dollars and a range of foreign currencies. In 1995, total return of the International Bond portfolio was 9.95% compared to 20.9% for the North American Government Income portfolio, 21.17% for the Global Dollar Government portfolio and 22.28% for the Global Bond portfolio. In 1996, total return of the International Bond portfolio was 4.49% compared to 17.03% for the North American Government Income portfolio, 23.14% for the Global Dollar Government portfolio and 4.71% for the Global Bond portfolio. In 1997, total return of the International Bond portfolio was -4.77%, compared to 8.09% for the North American Government Income portfolio, 11.65% for the Global Dollar Government portfolio and -0.74 for the Global Bond portfolio. The total annual expenses for the International Bond portfolio are 1.11% (0.80% management fee and 0.31% other expenses). The total annual expenses for the North American Government Income portfolio are 0.95% (0.19% management fee and 0.76% other expenses). However, the North American Government Income portfolio has a 0.46% management fee waiver. The total annual expenses for the Global Dollar Government portfolio are 0.95% (0.00% management fee and 0.95% other expenses). However, the adviser to the Global Dollar Government portfolio currently is waiving its management fee of 0.75% and reimbursing 0.27% of the portfolio's other expenses. If the management fee waiver and expense reimbursement arrangement were to be discontinued or partially waived, total annual expenses would increase to as much as 1.97%. The total annual expenses for the Global Bond portfolio are 0.94% (0.44% management fee and

0.50% other expenses). However, the investment adviser is waiving a portion of the management fee equal to 0.21%. Without the management fee waiver and expense reimbursement, total portfolio expenses would be 1.15%.

24. The JanCap Growth portfolio seeks growth of capital in a manner consistent with the preservation of capital, by investing in the common stock of industries and companies that the Portfolio's sub-advisor believes are experiencing favorable demand for their products and services, and which operate in a favorable competitive and regulatory environment. The Premier Growth portfolio seeks growth of capital by pursuing aggressive investment policies in the equity securities of a limited number of large, carefully selected, American companies that, in the judgment of the portfolio's advisor, are high quality and likely to achieve superior earnings growth. The Growth portfolio seeks long-term growth of capital by investing primarily in equity securities of companies with a favorable outlook for earnings and the rate of growth of which is expected to exceed that of the United States economy over time. Year-to-date total return of the JanCap Growth portfolio is 36.44%, compared to 30.50% for the Premier Growth portfolio and 16.06% for the Growth portfolio. The total return of the JanCap Growth portfolio for the past 12 months has been 31.05%, compared to 28.44% for the Premier Growth portfolio and 22.48% for the Growth portfolio. The total return of the JanCap Growth portfolio for the past three years has been 31.55%, compared to 30.24% for the Premier Growth portfolio and 25.90% for the Growth portfolio. The total annual expenses of the JanCap Growth portfolio are 1.06% (0.88% management fee and 0.18% other expenses), compared to 1.08% (1.00% management fee and 0.08% other expenses) for the Premier Growth portfolio and 0.84% (0.75% management fee and 0.09% other expenses) for the Growth portfolio. However, the JanCap Growth portfolio currently has in place a management fee waiver equal to 0.02%. Without the fee waiver, total annual expenses of the JanCap Growth portfolio would be 1.08%.

25. The Lord Abbett Growth & Income portfolio seeks long-term growth of capital and income while attempting to avoid excessive fluctuations in market value by investing in securities which are selling at reasonable prices in relation to value. Normally, investments will be made in common stocks of seasoned companies which are expected to show above-average growth and

which the Sub-advisor believes to be in sound financial condition. The Growth and Income portfolio seeks reasonable current income and reasonable opportunity for appreciation through investments primarily in dividend-pay common stocks of good quality. The Utility Income portfolio seeks current income and capital appreciation by investing primarily in equity and fixed income securities of companies in the utilities industry. Year to date total return of the Lord Abnett Growth & Income portfolio has been 4.26% compared to 11.45% for the Growth and Income portfolio and 8.98% for the Utility Income portfolio. The total return of the Lord Abnett Growth & Income portfolio over the past 12 months has been 3.54% compared to 13.76% for the Growth and Income portfolio and 23.56% for the Utility Income portfolio. The total return of the Lord Abnett Growth & Income portfolio over the past three years has been 16.76% compared to 23.44% for the Growth and Income portfolio and 15.00% for the Utility Income portfolio. The total annual expenses for the Lord Abnett Growth & Income Portfolio are 0.93% (0.75% management fee and 0.18% other expenses), compared to 0.72% (0.63% management fee and 0.09% other expenses) for the Growth and Income portfolio and 0.95% (0.19% management fee and 0.76% other expenses) for the Utility Income portfolio. However, the Utility Income portfolio currently has a 0.56% management fee waiver in place. Without the fee waiver, total annual expenses of the Utility Income portfolio would increase to 1.51%.

26. ASLAC, on its own behalf and on behalf of Account B, also proposes to exercise its contractual right to eliminate the Alger American Small Capitalization Portfolio of The Alger American Fund ("Alger Small Capitalization portfolio") as an investment option under the following contracts: Account B-1 Contracts (PSA, ASAP, ASAPII, ASXT, ASL, and ASPro); Account B-2 Contracts (Advisors Choice and Advisors Choice2); and Account B-3 Contracts (ASImpact). ASLAC proposes to substitute shares of AST Kemper Small Cap Growth portfolio, (Kemper Small Cap Growth portfolio), a portfolio of American Skandia Trust that is sub-advised by Scudder Kemper Investments, Inc. for shares of the Alger Small Capitalization portfolio ("Substitution No. 3"). The investment objectives and policies of the Alger Small Capitalization and Kemper Small-Cap Growth portfolios are very similar.

Both portfolios seek capital appreciation by investing in smaller companies, generally within the range of companies included within the Russell 2000 Growth Index (\$1 billion to \$1.5 billion capitalization). The Kemper Small-Cap Growth portfolio is a new portfolio that applicants began to offer on January 4, 1999. Its investment objective and style modeled after the Investors Fund Series Kemper Passport Small Cap Growth Fund ("Passport Fund"), an underlying mutual fund offered to various sub-accounts of Kemper Investors Life Insurance Company, and its portfolio manager will be the same as the portfolio manager of the Passport Fund. Total return of the Passport Fund has been 28.47% (1995), 26.45% (1996) and 32.55% (1997), respectively. Total return of the Alger Small Capitalization portfolio has been 42.29% (1995), 2.71% (1996) and 9.83% (1997), respectively. Total annual expenses for the Alger Small Capitalization portfolio are 0.89% (0.85% management fee and 0.04% other expenses). The management fee for the AST Kemper Small-Cap Growth portfolio will be 0.95% on the first \$1 billion of portfolio assets and 0.90% on assets in excess of \$1 billion. Other expenses for the AST Kemper Small-Cap Growth portfolio are estimated and annualized at 0.59%. However, the portfolio has a voluntary expense cap so that initially, total annual expenses will be 1.35%.

27. ASLAC, on its own behalf and on behalf of Account B, also proposes to exercise its contractual right to eliminate the Stein Roe Venture Portfolio of AST ("Venture portfolio") as an investment option under the following contracts: Account B-1 Contracts (PSA, ASAP, ASAPII, ASXT, Stagecoach XT, ASL, Stagecoach ASL, ASPro, Stagecoach VA Plus and Stagecoach Variable Annuity); Account B-2 Contracts (Advisors Choice and Advisors Choice2); and Account B-3 Contracts (ASImpact). ASLAC proposes to substitute shares of the AST T. Rowe Price Small Company Value Portfolio ("Value portfolio"), that is sub-advised by T. Rowe Price Associates, Inc., for shares of the Venture portfolio ("Substitute No. 4," together with Substitutions 1-3, "Substitutions"). (The portfolios to be replaced in the Substitutions are referred to collectively as the "Replaced Portfolios." The portfolios to be substituted in the Substitutions are referred to collectively as the "Substitute Portfolios.") Both portfolios are managed with a value approach, seeking stocks of companies whose current stock prices do not appear to adequately reflect their

underlying value as measured by assets, earnings, cash flow, or business franchises. The Value portfolio has been in existence since December 31, 1996. Its total return has been 0.75% for the last 12 months and 11.33% since inception. The Venture portfolio has been in existence since December 31, 1997. Since inception, its total return has been—13.51%. Total annual expenses for the Value portfolio are currently 1.16% (0.90% Management fee and 0.26% other expenses), compared to an estimated 1.34% for the Stein Roe Venture portfolio (0.95% management fee and 0.39% estimated other expenses). Estimated annual other expenses before giving effect to an expense reimbursement for the Venture portfolio are 1.24%. Applicants assert that the Venture portfolio has not been able to accumulate enough assets to make it a viable portfolio.

28. In any state, at least five days prior to the latest of: (a) the granting of the requested exemptive relief; (b) approval, if required, of the state insurance department in a particular state; or (c) the date determined by the management of ASLAC ("Measuring Date"), ASLAC will mail a written notice to all owners ("Contract Owners") of the applicable Annuity (the "Notices"). ASLAC will also mail the Notices to other persons who have vested interests in an Annuity. The Notices will include a current AST prospectus. Transfer request forms and prepaid postage return envelopes will be included with the Notices.

29. ASLAC distributed a prospectus supplement to Contract Owners of the respective contracts affected by Substitution No. 1 and Substitution No. 2 on or about March 10, 1998. The supplement notified Contract Owners of those proposed substitutions and the impact on the availability of the Replaced Portfolios. In addition, the May 1, 1998 prospectus for each of those Contracts disclosed the proposed substitutions and discussed the rights of Contract Owners. On December 31, 1998, ASLAC distributed a prospectus supplement to Contract Owners affected by Proposed Substitution No. 3 and Proposed Substitution No. 4 regarding the proposed substitutions and the rights of Contract Owners.

30. As of the Measuring Date, any initial allocations or internal transfers to any Sub-account offering investment in the Replaced Portfolios ("Replaced Sub-accounts") will automatically be allocated to the corresponding Sub-account offering investment in the corresponding Substitute Portfolio ("Substitute Sub-account"). Replaced Sub-accounts will not be eligible for any

new allocations or transfers on or after the Measuring Date.

31. Up to and including the 59th calendar day, or if the 59th calendar day is not a business day, then the following business day, after the Measuring Date, (the "Voluntary Transfer End Date"), Contract Owners may transfer Account Value out of any Replaced Sub-account to any other available Sub-account without transfer fees. Furthermore, any such transfer will not be counted toward the limitation on transfers, currently 12 per year in each of the Annuity contracts.

32. The next business day after the Voluntary Transfer End Date (the 60th calendar day or the next business day following the 60th calendar day) will be the "Automatic Selection Date." On the Automatic Selection Date, any Account Value that remains allocated to each Replaced Sub-account will be automatically transferred to the corresponding Substitute Sub-account. During the 30 days following the Substitution Date, Contract Owners may transfer value out of any Substitute Sub-Account to any other available Sub-account with no transfer fees.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitutions. Applicants represent that the purposes, terms, and conditions of the Substitutions are consistent with the protection for which Section 26(b) was designed. Applicants assert that Substitution No. 1 would benefit investors because it would result in greater administrative efficiency and enhanced oversight of the MidCap portfolio by ASLAC while continuing to provide Contract Owners with a "best-

in-class" money manager and the identical fund objective and investment policies and restrictions as those of the Partners portfolio. Applicants assert that Substitution No. 2 would benefit investors because it would consolidate insufficiently sized Subaccounts, which would help reduce the high fixed costs of compliance and reporting of Alliance and that segment of Account B-1 dedicated to the Alliance Capital Navigator annuity. Following the Substitutions, Alliance Capital Navigator Contract Owners would be able to reallocate account value to any of the variable investment options available through American Skandia Trust in addition to the three remaining portfolios of the Alliance Variable Products Series. Furthermore, Alliance Capital Navigator Contract Owners are likely to benefit from economies of scale in most cases as a result of Substitution No. 2. Substitution No. 3, like Substitution No. 1, would result in greater administrative efficiency and enhanced oversight of the Substitute Portfolio by ASLAC. Applicants assert that oversight has been a particular issue with the Replaced Portfolio, which has experienced significant "style drift" within its objective and investment style. The Replaced Portfolio's securities holdings have drifted toward a midsize capitalization. In addition, its performance has not been satisfactory when compared to other small capitalization portfolios in its universe or when compared to the most relevant index, the Russell 2000. Substitution No. 4 would benefit investors by replacing a portfolio that has not been able to generate enough asset flow to make it a viable portfolio and over its limited tenure, has had performance that was below its peer group.

3. Any investor who does not want his or her assets allocated to the Substitute Portfolios would be able to transfer assets to any one of the other sub-accounts available under their annuity without charge prior to the Automatic Selection Date or up to 30 days after the Automatic Selection Date.

4. Applicants represent that the Substitutions will be effected at net asset value in conformity with Sections 22(c) and 22(g) of the 1940 Act and Rule 22c-1 thereunder. The Substitutions may be effected primarily for cash, but also may involve partial redemptions in-kind of securities. The use of in-kind redemptions in conformity with Section 22(g) of the 1940 Act will reduce the brokerage expenses involved in the Substitutions. The in-kind redemptions will be affected to the extent consistent with the investment objectives and any applicable diversification requirements.

5. ASLAC or the investment adviser of the Substitute Portfolios (or sub-advisor where applicable) will assume the transfer and custodial expenses and legal and accounting fees incurred with respect to the Substitutions. Contract Owners will not incur any fees or charges as a result of the transfer of account values from any portfolio. All contract level fees and charges and the asset-based fees (morality, expense risk and administration fees) deducted by the separate account will remain the same after the Substitutions. Applicants represent that the rights and benefits of Contract Owners or ASLAC's obligations, under any Annuity will not be altered in any way. Applicants further represent that the Substitutions are designed to avoid any adverse effects upon the tax benefits available to Contract Owners; the Substitutions are designed not to give rise to any current Federal income tax to policyholders.

6. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

7. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants request an order pursuant to Sections 6(c) and 17(b) of the 1940 Act exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act.

9. Applicants represent that the terms of the Substitutions are reasonable and fair and do not involve overreaching on the part of any person concerned. The Substitutions would be effected at the net asset value of the securities involved and the interests of Contract Owners would not be diluted. In-kind redemptions would alleviate some of the expenses involved with the Substitutions and only would be used to the extent they are consistent with the investment objectives and applicable diversification requirements of the affected portfolios. All in-kind redemptions would be conducted in a

manner conforming with the conditions of Rules 17a-7 under the 1940 Act.

10. Applicants represent that the Substitutions and the in-kind redemptions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitutions and exempting the in-kind redemptions should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-3773 Filed 2-16-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23688; 812-11134]

The Infinity Mutual Funds, Inc., et al.; Notice of Application

February 10, 1999.

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

ACTION: Notice of application for exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 17(a) and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants seek an order to permit certain registered investment companies (a) to pay BISYS Fund Services Limited Partnership ("BISYS") and certain of its affiliated persons fees for acting as lending agent with respect to a securities lending program ("Program"); (b) to lend portfolio securities to affiliated broker-dealers; (c) to deposit the cash collateral received in connection with the Program and other uninvested cash in one or more joint trading accounts; and (d) to use cash collateral received in connection with the Program to purchase shares of affiliated private investment company, the BISYS Securities Lending Trust (the "Trust").

Applicants: The Infinity Mutual Funds, Inc. (the "Fund"), BISYS, BISYS Fund Services Ohio, Inc. ("BISYS Ohio"), the Trust, and First American National Bank ("First American").

Filing Dates: The application was filed on May 5, 1998. Applicants have

agreed to file an amendment, the substance of which is reflected 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 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 March 8, 1999, and should be accompanied by proof of service on the 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. The Fund, the Trust, BISYS Ohio, and BISYS, 3435 Stelzer Road, Columbus, Ohio 43219-3035. First American, 315 Deaderick Street, Nashville, Tennessee 37237.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Boggs, Senior Counsel, at (202) 942-0572, or Christine Y. Greenlees, 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 is available for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (telephone (202) 942-8090).

Applicants' Representations

1. The Fund, a Maryland corporation, is an open-end management investment company registered under the Act and consists of twenty-five separate series (the "Portfolios"). Twenty-three of the Portfolios are advised by First American. BISYS serves as each Portfolio's administrator and distributor and BISYS Ohio serves as each Portfolio's transfer and dividend disbursing agent and full accountant. BISYS and BISYS Ohio are wholly-owned subsidiaries of The BISYS Group, Inc.

2. The Trust is a Massachusetts business trust and will initially consist of two portfolios (each an "Investment Fund") advised by the Adviser (defined below). Each Investment Fund will value its securities based on the amortized cost method and comply with rule 2a-7 under the Act.

3. Trust shares will be offered to the Lending Funds and other participants in the Program in reliance on the exemption provided by Regulation D under the Securities Act of 1933. The Trust intends to operate as a private investment company excluded from the definition of "investment company" pursuant to section 3(c)(1) or (7) of the Act. Shares in the Trust will have no voting rights and may not be transferred without the consent of the trustee. BISYS will be the sole trustee ("Trustee") and will oversee the Trust's operations and also will provide accounting and administrative services to the Trust. BISYS and the Adviser will be compensated by the Trust for their services. Trust shares will not be subject to any sales load, redemption fee, asset-based sales charge or service fee.

4. Applicants request that relief be extended to (a) any registered investment company or series of a registered investment company for which BISYS, or any person controlling, controlled by or under common control with BISYS, now or in the future serves as principal underwriter, administrator, or distributor and for which First American or any person controlling, controlled by, or under common control with First American (each, an "Adviser") now or in the future serves as investment adviser (collectively with the Fund, the "Funds"); (b) BISYS and any person controlling, controlled by or under common control with BISYS, including registered broker-dealers that are controlling, controlled by or under common control with BISYS (the "Affiliated Broker-Dealers"); and (c) the Trust and any other private investment company organized by BISYS or any person controlling, controlled by, or under common control with BISYS and advised by an Adviser (any future private investment companies are also the "Trust" and their series the "Investment Funds").¹

5. Several of the Portfolios currently participate in the Program administered by BISYS Ohio. Each Fund that participates in the Program ("Lending Fund") will be permitted to lend its portfolio securities, and its prospectus will disclose that it may engage in portfolio securities lending. Currently, BISYS Ohio provides administrative services in connection with the Program and engages an independent third-party to act as securities lending agent for the Lending Funds. In the future, BISYS Ohio may act as securities lending agent

¹ All existing entities that currently intend to rely on the requested relief have been named as applicants. Any existing and future entity may rely on the order in the future only in accordance with the terms and conditions in the application.