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]

BILLING CODE 8010–01–M

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.

(collectively with the third-party lending agents, the ''Lending Agent'').

6. Under the Program, the Lending Agent enters into agreements with borrowers (''Borrowers'') to lend them portfolio securities of the Fund (''Securities Loan Agreements''). Pursuant to the Securities Loan Agreements, the Lending Agent delivers Lending Fund's portfolio securities to Borrowers in exchange for cash collateral or other types of collateral, such as U.S. government securities. Cash collateral is delivered in connection with most loans. The Lending Agent invests the cash collateral on behalf of the Lending Funds in accordance with specific parameters set forth in the Securities Loan Agreements. These guidelines include permissible investment of the cash collateral as well as a list of eligible types of investments.

7. With respect to securities loans that are collateralized by cash, the Borrower is entitled to receive a fixed cash collateral fee based on the amount of cash held as collateral. The Lending Fund in this case is compensated on the spread between the net amount earned on the investment of the cash collateral and the Borrower's cash collateral fee. In the case of collateral that is other than cash, the Lending Fund receives a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities as specified in the Securities Loan Agreement.

8. The applicants request relief to permit: (a) the Funds to pay and BISYS Ohio or any person controlling, controlled, or under common control with BISYS, to accept fees based on a share of the proceeds derived by the Funds from their securities lending transactions, for services as Lending Agent; (b) the Funds to deposit cash collateral received in connection with their securities lending activities and other uninvested cash [2] in one or more joint trading accounts or subaccounts (the ''Joint Accounts''); (c) the Funds to use some or all of the cash collateral received in connection with their securities lending activities to purchase shares of the Trust and the Trust to redeem shares from the Funds; and (d) the Funds to lend portfolio securities to Affiliated Broker-Dealers.

[2] Uninvested cash may occur in connection with a Fund maintaining cash reserves to meet redemption requests or as a result of late day purchases by shareholders.

Applicants' Legal Analysis

A. Payment of Fees by Lending Funds to BISYS Ohio

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Section 2(a)3 of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Because BISYS Ohio and BISYS (the Funds' principal underwriter) are each wholly-owned subsidiaries of The BISYS Group, Inc., they may be deemed to be under ''common control'' and therefore affiliated persons, and BISYS Ohio may be deemed an affiliated person of the principal underwriter for each Lending Fund. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit each Lending Fund to pay and BISYS Ohio, or any other person controlling, controlled by, or under common control with BISYS, to accept fees that are based on a share of the proceeds derived by the Funds in connection with services provided as Lending Agent.

2. Rules 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

3. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with BISYS Ohio, as Lending Agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of BISYS Ohio as lending agent for a Lending Fund and implementation of the proposed fee arrangement, a majority of the board of directors (the ''Board'') (including a majority of the directors who are not ''interested persons'' within the meaning of the Act (the ''Disinterested Directors'') of the Lending Fund will determine that (i) the contract with BISYS Ohio is the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by BISYS Ohio are appropriate for the Lending Fund; (iii) the nature and quality of the services provided by BISYS Ohio are at least equal to those offered and provided by others; and (iv) the fees for BISYS Ohio's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Lending Fund's contract with BISYS Ohio for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Directors) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby BISYS Ohio will be compensated as lending agent based on a percentage of the revenue generated by a Lending Fund's participation in the Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the Disinterested Directors, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness.

(e) Each Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modifications) described in the application or otherwise followed in connection with lending securities pursuant to the Program and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Uninvested Cash and Cash Collateral in the Joint Accounts

1. The Funds propose to deposit some or all of their cash collateral and other uninvested cash in the Joint Accounts established at the Funds' custodian for the purpose of investing in one or more of the following: (a) Repurchase agreements ''collateralized fully'' as defined in rule 2a–7 under the Act, (b) U.S. dollar denominated commercial paper and (c) any other short-term money market instruments that constitute ''Eligible Securities'' (as defined in rule 2a–7 under the Act) that are not subject to contractual or other restrictions on resale (collectively, ''Short-Term Investments''). Each Fund (the Funds that are eligible to participate and elect to participate in the Joint Accounts are the ''Participants'') will have the option to participate in any Joint Account on the same basis as every other Fund, subject to and in conformity with its own investment objectives, policies, and restrictions. The Adviser will be responsible for investing funds held by the Joint Accounts. BISYS, under the supervision of the Adviser, will be responsible for establishing accounting and control procedures, operating the Joint Accounts in accordance with the procedures described in the application, and ensuring fair treatment of the Participants.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the SEC has approved the transaction. Applicants state that the Participants, by participating in the proposed Joint Accounts, and the Adviser and BISYS, by administering the proposed Joint Accounts, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1 under the Act. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the Act to permit them to engage in the proposed Joint Accounts. Applicants believe that the requested relief meets the standards of rule 17d–1 for the reasons described below.

3. Applicants state that any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the SEC's published statements on repurchase agreements, and represent that repurchase agreement transactions will comply with future positions of the SEC to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the SEC sets forth guidelines with respect to other Short-Term Investments made through the Joint Accounts, the investments will comply with those guidelines.

4. The Joint Accounts may comprise multiple joint subaccounts, if BISYS or the Adviser determines that multiple joint subaccounts are necessary or advisable to provide the Funds with additional flexibility and choice in the Short-Term Investments in which they choose to invest. Joint subaccounts may also be established for other reasons, such as to facilitate monitoring of individual Funds' interests in different Short-Term Investments, consistent with the variations in investment restrictions and policies among the various Funds.

5. Each Fund's decision to invest in a Joint Account will be solely at the option of the Adviser within the standards and procedures established by that Fund's Board, and no Fund will be required to maintain any minimum balance. To eliminate any possibility of one Fund using any part of the balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason. Each Fund will retain sole rights to all of the cash and cash collateral invested by it in the Joint Accounts, including interest payable on the cash or cash collateral.

6. Applicants believe that each Participant's investment in a Joint Account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, or any other Participant. Each Fund's liability on any Short-Term Investment through the Joint Account will be limited to its own interest in the Short-Term Investment.

7. Applicants believe that the proposed method of operating the Joint Accounts will not result in any conflicts of interest between any of the Funds or between any Funds and BISYS or the Adviser. Applicants state that although BISYS will likely gain some benefit through the administrative convenience of the Funds investing in Short-Term Investments on a joint basis, and may experience some reduction in clerical costs, the Funds will be the primary beneficiaries because of the increased efficiencies realized through use of the Joint Accounts, the possible increase in rates of return available, and, for some Funds, the opportunity to invest in Short-Term Investments. Neither the Adviser nor BISYS will receive any additional fees from the Funds for the administration of the Joint Accounts.

C. Investment of Cash Collateral in Shares of the Trust

1. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the SEC has approved the transaction. Applicants state that the Funds (by purchasing and redeeming Trust shares), BISYS as principal underwriter of the Funds at the same time that the Funds' cash collateral is invested in Trust shares, and as Trustee and service provider to the Trust at the same time that the Trust sells Trust shares to and redeems them from the Funds, BISYS Ohio (by acting as Lending Agent), and the Trust (by selling shares to and redeeming them for the Funds) could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

2. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person (''Second-Tier Affiliate''), acting as principal, to sell or purchase any security to or from such investment company. BISYS is the principal underwriter for the Lending Funds. The Trust may be considered an affiliated person of BISYS under section 2(a)(3) of the Act because of BISYS' role as Trustee. In addition, since the Adviser is the investment adviser to the Trust and a Lending Fund, the Adviser would be an affiliated person of the Lending Funds under section 2(a)(3) and the Trust would be a Second-Tier Affiliate of the Lending Funds. Accordingly, the sale of shares of the Trust to the Fund, and the redemption of such shares from the Fund, would be prohibited under section 17(a).

3. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 6(c) under the Act permits the SEC to exempt any person or transaction from

any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

4. Applicants request an order under sections 6(c), 17(b), and 17(d) of the Act and rule 17d–1 under the Act to permit the Lending Funds to purchase and redeem Trust shares from the Trust and the Trust to sell and redeem Trust shares to and from the Lending Funds. Applicant state that a Fund's cash collateral will be invested in a particular Investment Fund only if the Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its cash collateral. Each Investment Fund will comply with rule 2a–7 under the Act.

5. Applicants state that the Lending Funds will purchase, hold and redeem Trust shares on the same basis as any other holder of Trust shares. Applicants assert that by investing cash collateral in Trust shares as proposed, the Lending Funds will be able to achieve liquidity, diversification, and quality of investments at a cost that is expected to be lower than the cost typically incurred when investing in a registered investment company. Further, each Investment Fund will comply with sections 17(a), (d), (e), and 18 of the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Trust will comply with section 22(e) of the Act.

D. Lending of Portfolio Securities to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or their Second-Tier Affiliates, acting as principal, to borrow money or other property from the registered investment company. Section 2(a)(3) of the Act defines the term affiliated person of another person to include any person under common control with that other person. Under section 2(a)(3) of the Act, BISYS and the Affiliated Broker-Dealers may be deemed to be persons under common control and thus affiliated persons of each other. Accordingly, for purposes of section 17(a)(3) of the Act, the Affiliated Broker-Dealers may be affiliated persons of the Funds' principal underwriter, BISYS, and thus prohibited from borrowing portfolio securities from the Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the SEC has approved the transaction. The Funds request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to lend portfolio securities to Affiliated Broker-Dealers. Applicants state that the Funds seek to diversify the Borrowers to whom they lend in order to ensure the stability and efficiency of the Program. Applicants submit that because only a few Borrowers may seek to borrow a particular security at a given time, a prohibition on lending to Affiliated Broker-Dealers could disadvantage a Fund.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.[3] In this regard, applicants state that at least 50% of the loans made by the Funds, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Fund, including a majority of the Disinterested Directors. All transactions with the Affiliated Broker-Dealers will be reviewed periodically by the officers of the Funds. Quarterly, officers of the Funds and the Lending Agent will present reports on the lending transactions to the Board, including a majority of the Disinterested Directors, for their review.

Applicant's Conditions

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

A. General

1. Any Fund or Investment Fund that relies on the requested order will be advised by the Adviser and distributed or administered by BISYS, or any entity controlling, controlled by, or under common control with BISYS.

2. The securities lending program of each Fund will comply with all present and future applicable SEC and staff positions regarding securities lending arrangements.

B. Joint Accounts

1. The Joint Accounts will be established as one or more separate cash accounts on behalf of the Funds at a custodian. Each Fund may deposit, daily, all or a portion of its uninvested cash and cash collateral into the Joint Accounts.

2. Cash in the Joint Accounts will be invested in one or more Short-Term Investments, as directed by the Adviser. Short-Term Investments that are repurchase agreements will have a remaining maturity of 60 days or less and other Short-Term Investments will have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash collateral in a Joint Account would be invested in Short-Term Investments which have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a–7 under the Act.

3. All Short-Term Investments invested in through the Joint Accounts will be valued on an amortized cost basis. Each Fund that relies upon rule 2a–7 under the Act will use the dollar-weighted average maturity of a Joint Account's Short-Term Investments for the purpose of computing that Fund's average portfolio maturity with respect to the portion of the cash held by it in that Joint Account.

4. The Fund's Adviser, fund accountant, pricing agent, and custodian will maintain records (in conformity with section 31 of the Act and the rules and regulations under the Act) documenting, for any given day, the Fund's aggregate investment in the Joint Account and the Fund's *pro rate* share of each Short-Term Investment made through the Joint Account.

5. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) the Adviser believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Participants in the investment because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. Any Short-Term Investment (or any fractional portion thereof), however, may be sold on behalf of some or all Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and

[3] A ''spread'' is the compensation earned by a Fund, as lender, from a securities loan. The compensation is in the form either of a lending fee payable by the borrower to the Fund (where non-cash collateral is posted) or of the excess—retained by the Fund—over a rebate rate payable by the Fund to the borrower (where cash collateral is posted and then invested by the Fund).

partition of the investments in the Joint Account.

6. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and will be subject to the restriction that a Fund may not invest more than a % or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if the instrument, or the Fund's fractional interest in such instrument, cannot be sold pursuant to the preceding condition.

7. To assure that there will be no opportunity for one Fund to use any part of a balance of any Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its *pro rata* share of the entire balance at any time. Each Fund's decision to invest through the Joint Accounts shall be solely at the option of that Fund and the Adviser (within the standards and procedures established by the Fund's Board), and no Fund will be obligated, in any way, to invest through, or to maintain any minimum balance in, the Joint Accounts. In addition, each Fund will retain the sole rights to any of the cash, including interest payable on the cash, invested by that Fund through the Joint Accounts.

8. Each Fund will participate in the income earned or accrued in the Joint Account through which it is invested on the basis of its percentage share of the total balance of the Joint Account on that day.

9. The Adviser will be responsible for investing funds held by the Joint Accounts. BISYS will administer the Joint Accounts in accordance with the standards and procedures established by the Board of the Funds as part of its duties under the existing or any future administrative contract with the Funds. Neither BISYS nor the Adviser will receive additional or separate fees for advising or administering the Joint Accounts.

10. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

11. The Board of each Fund investing in Short-Term Investments through the Joint Accounts will adopt procedures pursuant to which the Joint Accounts will operate, which procedures will be reasonably designed to provide that requirements of the requested order will be met. In addition, not less frequently than annually, the Board will evaluate the Joint Account arrangements, will determine whether the Joint Accounts have been operated in accordance with the adopted procedures, and will authorize a Fund's continued participation in the Joint Accounts only if the Board determines that there is a reasonable likelihood that such continued participation would benefit that Fund and its shareholders.

12. The Joint Accounts will not be distinguishable from any other accounts maintained by a fund with a custodian except that cash from various Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence with indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management and investment by each Fund of its cash.

13. All transactions in Short-Term Investments that are repurchase agreements will be effected in accordance with Investment Company Act Release No. 13005 (February 2, 1983) and with future positions taken by the Commission or the staff by rule, release, or no-action letter.

C. The Trust

1. A majority of the Board of the Lending Fund (including a majority of the Disinterested Directors), will initially and at least annually thereafter determine that the investment of cash collateral in Trust shares is in the best interests of the shareholders of the Lending Fund.

2. Investment in Trust shares by a particular Lending Fund will be consistent with that Lending Fund's investment objectives and policies.

3. Each Investment Fund will comply with rule 2a–7 under the Act. Each Investment Fund will value its shares, as of the close of business on each business day, using the ''amortized cost method,'' as defined in rule 2a–7 under the Act, to determine the net asset value per share of the Investment Fund. The Trust will, subject to approval of the Trustee, adopt the monitoring procedures described in rule 2a–7(c)(7) under the Act and the Adviser will comply with these procedures and take any other actions as are required to be taken pursuant to these procedures.

4. The Trust will comply as to each Investment Fund with the requirements of sections 17(a), (d) and (e), and 18 of the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Trust will comply with section 22(e) of the Act. The Adviser shall, subject to approval by the Trustee, adopt procedures designed to ensure that the Trust complies with sections 17(a), (d) and (e), 18, and 22(e) of the Act. The Adviser also will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be kept pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and the staff.

5. The net asset value per share with respect to Trust shares will be determined separately for each Investment Fund by dividing the value of the assets belonging to that Investment Fund, less the liabilities of that Investment Fund, by the number of Trust shares outstanding with respect to that Investment Fund.

6. The Trust shares will not be subject to a sales load, redemption fee, any asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

7. Each Lending Fund will purchase and redeem trust shares as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Trust. A separate account will be established in the shareholder records of the Trust for the account of each Lending Fund.

8. The Investment Fund will not acquire any securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

D. Lending to Affiliated Broker-Dealers

1. The Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one broker-dealer on the approved list will be in accordance with a schedule to be approved by the Fund's Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Fund, computed at market.

3. A Fund will not make any loan to an Affiliated Broker-Dealer unless the

income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. (a) All loans will be made with spreads no lower than those set forth in the schedule of spreads which will be established and may be modified from time to time by each Fund's full Board and by a majority of the Disinterested Directors (''Schedule of Spreads'').

(b) The Schedule of Spreads will set forth rates of compensation to the Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all Borrowers of the Fund's portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

(d) If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) The Fund's Program will be monitored on a daily basis by an officer of the Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Fund's Board, including a majority of the Disinterested Director.

5. The Fund's Board, including a majority of the Disinterested Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of the requested order and that such transactions were conducted on terms which were reaonsable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3774 Filed 2–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23690; 812–11504]

Sweig/Glaser Advisers, et al.; Notice of Application

February 11, 1999.

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

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

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without prior shareholder approval, of certain sub-advisory agreements in connection with the acquisition (''Acquisition'') of Zweig/Glaser Advisers (''Zweig/Glaser'') and Zweig Advisors Inc. (''Zweig,'' collectively with Zweig/Glaser, the ''Sub-advisers'') by Phoenix Investment Partners, Ltd. (''Phoenix''). The order would cover a period of up to 150 days following the later of: (i) the date on which the Acquisition is consummated (the ''Acquisition Date''), or (ii) the date on which the requested order is issued (but in no event later than July 23, 1999) (''Interim Period''). The order also would permit the Sub-advisers to receive all fees earned under the New Sub-advisory Agreements during the Interim Period following shareholder approval.

Applicants: The Sub-Advisers.

Filing Dates: The application was filed on February 9, 1999. Applicants have agreed to file an amendment to the application, 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 4, 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 SEC's Secretary.

Addresses: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 900 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202–942–8090).

Applicants' Representations

1. Zweig/Glaser, a New York general partnership, is an investment adviser registered under the Investment Advisers Act of 1940 (''Adivsers Act''). Zweig, a Delaware corporation, is an investment adviser registered under the Advisers Act.

2. Zweig/Glaser serves as the sub-adviser for the Zweig Asset Allocation Fund and the Sweig Equity (Small Cap) Fund (the ''Funds''), each a series of Legends Funds, Inc., an open-end management investment company registered under the Act.

3. Zweig serves as the sub-adviser for the Strategic Equity Series and the Multiple Allocation Series (the ''Portfolios''), each a series of the GCG Trust, an open-end management investment company registered under the Act. The Funds and the Portfolios are each referred to as an ''Investment Company'' and collectively, as the ''Investment Companies.'' The sub-advisory agreements currently in effect between the Sub-advisers and the Investment Companies are each referred to as an ''Existing Sub-advisory Agreement'' and collectively, as the ''Existing Sub-advisory Agreements.''

4. On December 15, 1998, the Sub-advisers entered into an acquisition