

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25556; 812-12795]

### First American Investment Funds, Inc., et al.; Notice of Application

April 26, 2002.

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

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

#### SUMMARY OF THE APPLICATION:

Applicants request an order to permit certain series of two registered open-end management investment companies to acquire all of the assets, net of liabilities, of certain other series of the same registered open-end management investment companies. Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

*Applicants:* First American Investment Funds, Inc. ("FAIF"), First American Strategy Funds, Inc. ("FASF") and U.S. Bancorp Asset Management, Inc. ("USBAM").

*Filing Dates:* The application was filed on March 15, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 17, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o John A. Haveman, Esq., Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management,

Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. FAIF, a Maryland corporation, and FASF, a Minnesota corporation, are registered under the Act as open-end management investment companies. FAIF currently offers forty-four series and FASF currently offers five series. Four of the series of FAIF and one series of FASF are referred to as the "Acquiring Funds" and four other series of FAIF and one other series of FASF are referred to as the "Acquired Funds," and together the Acquiring Funds and the Acquired Funds are referred to as the "Funds" and individually as a "Fund."

2. USBAM, a wholly-owned subsidiary of U.S. Bank Nation Association ("U.S. Bank") and indirect subsidiary of U.S. Bancorp, serves as investment adviser to the Funds and is registered under the Investment Advisers Act of 1940. U.S. Bank and its affiliates are part of a common control group and are collectively referred to as the "U.S. Bancorp Affiliates." Currently, U.S. Bancorp Affiliates, in a fiduciary or custodial capacity for various accounts, hold of record in their own name or through a nominee more than 5% (and more than 25%) of the outstanding shares of each Fund, and hold or share voting power and/or investment discretions with respect to a portion of these shares. Included in the shares held of record by the U.S. Bancorp Affiliates are shares held for the benefit of defined benefit and defined contribution plans for which U.S. Bancorp or one or more of its subsidiaries have funding obligations.

3. On February 21, 2002, the board of directors of FAIF and FASF (the "Board"), including all of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Directors"), approved the proposed reorganizations and agreements and plans of reorganization of the respective Funds (the "Reorganization Agreements"). Under the Reorganization Agreements, each class of the applicable Acquiring Fund will acquire all of the assets and assume identified liabilities of the corresponding class of the corresponding Acquired Fund in exchange for shares of that class of the

Acquiring Fund (the "Reorganizations")<sup>1</sup> on May 20, 2002 ("Closing Date"). The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares calculated as of the close of the regular trading on the New York Stock Exchange on the business day immediately preceding the Closing Date ("Valuation Time"). The method of valuation of the net asset value of the assets of the Funds will be determined according to the applicable Fund's then-current prospectus and statement of additional information. As soon as reasonably practicable after the Closing Date, the Acquired Funds will distribute the shares of each class of the corresponding Acquiring Funds pro rata to their shareholders of record. Following the distribution of the Acquiring Funds' shares, the Acquired Funds will terminate.

4. Each of the Acquired Funds and Acquiring Funds offers shares in five classes: Class A, Class B, Class C, Class S and Class Y. Shareholders of each class of the Acquired Fund will receive shares of the corresponding class of the corresponding Acquiring Fund. Class A shares are subject to a front-end sales charge, rule 12b-1 distribution fees, service fees and a contingent deferred sales charge ("CDSC"). Class B shares are not subject to an initial sales charge, but are subject to rule 12b-1 distribution fees, service fees and a CDSC. Class C shares are subject to a front-end sales charge, rule 12b-1 distribution fees, service fees and a CDSC. Class S and Class Y shares are offered through banks and certain other financial institutions that have entered into sales agreements with the Funds' distributor and sold without any front-end sales charge or a CDSC, rule 12b-1 distribution fees and service fees but are subject to a shareholder servicing fee.

5. No front-end sales charge will be imposed on Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares in the Reorganizations. No CDSC will be imposed on any of the Acquired Funds shares that are canceled as a result of the Reorganizations. For purposes of calculating any CDSC on Class A, Class

<sup>1</sup> Under the Reorganizations, the Acquired Funds will merge into the corresponding Acquiring Funds as follows: Capital Growth Fund will merge into Large Cap Growth Fund, Relative Value Fund into Large Cap Value Fund, Growth & Income Fund into Equity Income Fund, Science & Technology Fund into Technology Fund and Strategy Global Growth Allocation Fund into Strategy Aggressive Allocation Fund.

B and Class C shares of the Acquiring Funds, shareholders of the Acquired Funds will be deemed to have held the shares of the Acquiring Funds since the date the shareholders initially purchased the shares of the Acquired Fund.

6. Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are similar, and in some cases identical, to those of the corresponding Acquiring Fund. Applicants state that the rights and obligations of each class of shares of the Acquired Funds are similar to those of the corresponding class of shares of the Acquiring Funds. USBAM will bear the costs associated with the Reorganizations.

7. The Board, including a majority of the Disinterested Directors, determined that the Reorganization is in the best interests of each Fund and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganizations, the Board considered various factors, including: (a) The terms and conditions of the Reorganizations; (b) the compatibility of the Funds' investment objectives, policies and limitations; (c) the potential opportunity for better investment performance of the Funds; (d) the potential for reduced operating expenses; (e) the potential elimination of confusion among shareholders with respect to products that may be considered duplicative; (f) the tax-free nature of the proposed Reorganizations; and (g) the fact that Reorganization expenses will be borne by USBAM.

8. Each Reorganization is subject to a number of conditions precedent, including: (a) Approval by the shareholders of each Acquired Fund; (b) receipt of certain opinions of counsel that the Reorganizations will be tax-free for the Funds' shareholders; (c) receipt from the Commission of an exemption from section 17(a) of the Act for the Reorganization; and (d) that the registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective. Each Acquired Fund will declared dividend(s) or distribution(s) which, together with all previous dividends and distributions, shall have the effect of distributing to its shareholders all investment company taxable income for all taxable periods ending on the Closing Date (computed without regard to any deduction for dividends paid) and all of its net capital gains realized in all taxable periods ending on the Closing Date (after reductions for any capital loss carryovers). Each Reorganization Agreement provides that

the Reorganization may be terminated by mutual consent by both parties or by either party upon breach or failure to satisfy a condition precedent by the other party at or before the Closing Date. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

9. Registration statements on Form N-14 (each containing a combined proxy prospectus/proxy statement) were filed with the Commission on March 4 and 6, 2002 with respect to the Reorganizations. Prospectus/proxy statements have been sent to shareholders beginning April 8, 2002. A special meeting of shareholders of the Acquired Funds to consider the Reorganizations is scheduled for May 14, 2002.

#### Applicants' Legal Analysis

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

2. Rule 17a-8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that rule 17a-8 may not be available to exempt the Reorganizations because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that Bancorp Affiliates hold of record 5% or more (and more than 25%) of the outstanding voting securities of each of the Funds, hold or share voting power and/or investment discretion with respect to a portion of these shares, and may be deemed to

have an indirect pecuniary interest in the performance of all but one of the Funds by virtue of ownership in excess of 5% of the shares of those Funds by defined benefit and defined contribution plans sponsored by the U.S. Bancorp Affiliates. As a result, each Fund may be deemed to be an affiliated person of an affiliated person of each other Fund.

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

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to effect the Reorganizations. Applicants submit that the Reorganizations satisfy the conditions of section 17(b) of the Act. Applicants state that the Board, including a majority of the Disinterested Directors, has determined that the participation of each of the Funds in the Reorganizations is in the best interests of the Fund and that such participation will not dilute the interests of the existing shareholders of each Fund. Applicants also state that the Reorganizations will be effected on the basis of relative net asset value.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [67 FR 20194, April 24, 2002].

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW, Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Wednesday, April 24, 2002, at 9:30 a.m.

**CHANGE IN THE MEETING:** Additional Item.