

shall not affect its continued listing on the Amex or its obligation to be registered under section 12(b) of the Act.<sup>4</sup>

Any interested person may, on or before September 17, 2004 comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1-13970 or;

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number 1-13970. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04-20067 Filed 9-1-04; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 26582; 812-12970]

### **ASA Limited, et al.; Notice of Application**

August 27, 2004.

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

**ACTION:** Notice of application under section 7(d) of the Investment Company Act of 1940 (the "Act").

*Summary of Application:* Applicants ASA Limited ("ASA"), a South African closed-end management investment company registered under section 7(d) of the Act, and ASA (Bermuda) Limited ("ASAB"), a Bermuda limited liability company, request an order that would permit ASA to change its country of incorporation from South Africa to Bermuda by reorganizing into ASAB and permit ASAB to register under the Act. Applicants also seek approval of certain changes to the custodian agreement and the conditions governing their custodial arrangements.

*Filing Dates:* The application was filed on May 1, 2003, and amended on August 13, 2004.

*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 September 17, 2004, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o R. Darrell Mounts, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Marc R. Ponchione, Senior Counsel, at (202) 942-7927, or Janet M. Grossnickle, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

#### *Applicants' Representations*

1. ASA is a closed-end management investment company organized in 1958 in South Africa. ASA is registered under the Act.<sup>1</sup> ASA's investment objective is to invest primarily in equity securities of South African issuers conducting, as the major portion of their business, gold mining and related activities in South Africa. As of April 30, 2004, approximately 74% of ASA's portfolio securities consist of equity securities issued by such companies. As of April 30, 2004, ASA has approximately \$372 million in assets and is internally managed by its director and chief executive officer who is a U.S. citizen residing in Buffalo, New York. Shares of ASA trade on the New York Stock Exchange ("NYSE").

2. ASA recently became subject to, or will soon become subject to, certain taxes in South Africa. ASA is presently subject to South African tax on its income from interest and foreign dividends. Interest received from funds held on deposit in South Africa is taxed at a rate of 30%. Beginning with the fiscal year ended November 30, 2002, interest received from funds held outside South Africa also became subject to a 30% tax. In addition, certain dividends received from investments outside South Africa are subject to a 30% tax. South Africa also imposes a capital gains tax ("CGT") on investment gains and a secondary tax on corporations ("STC") on dividends and

<sup>1</sup> Investment Company Act Release Nos. 2739 (July 3, 1958) (notice) and 2756 (Aug. 13, 1958) (order) (the "Original Order"). Since 1958, the Original Order has been amended on a number of occasions. See Investment Company Act Release Nos. 24321 (Feb. 29, 2000) (notice) and 24367 (Mar. 27, 2000) (order) (the "CSD Order"); Investment Company Act Release Nos. 21161 (June 23, 1995) (notice) and 21220 (July 20, 1995) (order); Investment Company Act Release No. 17904 (Dec. 17, 1990) (notice) and 17945 (Jan. 15, 1991) (order); Investment Company Act Release Nos. 14826 (Dec. 4, 1985) (notice) and 14878 (Dec. 31, 1985) (order); Investment Company Act Release Nos. 11669 (Mar. 6, 1981) (notice) and 11722 (Apr. 7, 1981) (order) (collectively with the CSD Order, the "Custody Orders"); Investment Company Act Release Nos. 8278 (Mar. 20, 1974) (notice) and 8312 (Apr. 17, 1974) (order); Investment Company Act Release Nos. 7860 (June 12, 1973) (notice) and 7894 (July 10, 1973) (order); Investment Company Act Release Nos. 2944 (Dec. 14, 1959) (notice) and 2957 (Dec. 29, 1959) (order); Investment Company Act Release Nos. 2883 (May 22, 1959) (notice) and 2886 (June 9, 1959) (order); and Investment Company Act Release Nos. 2817 (Jan. 5, 1959) (notice) and 2821 (Jan. 20, 1959) (order) (collectively with the Custody Orders, the "Subsequent Orders" and together with the Original Order, the "Prior Orders").

<sup>4</sup> 15 U.S.C. 78j(b).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

liquidation distributions to shareholders. At the time of its organization in 1958, ASA received from the South African government an exemption from the CGT and the STC. Recently, South African authorities indicated that ASA's exemption from these taxes will be repealed effective November 30, 2004.

3. Applicants request an order to permit ASA to change its country of incorporation from South Africa to Bermuda by reorganizing into ASAB ("Reorganization"), and to permit ASAB to register under the Act.<sup>2</sup> ASAB is a limited liability company organized in Bermuda on April 29, 2003 for the purpose of the Reorganization. ASAB's investment policies and limitations will be the same in all material respects as ASA's. ASAB will be internally managed and the current directors and substantially all of the officers of ASA, including the chief compliance officer, will serve as the directors and officers of ASAB. Aside from the Reorganization, ASAB has no current plans to make any additional public offerings of its securities. Prior to issuing its shares in the Reorganization, ASAB intends to take the actions necessary for its shares to be listed and traded on the NYSE. Following the Reorganization, ASA will be wound up in South Africa and will deregister under the Act.

4. JP Morgan Chase Bank ("Chase") has served as ASA's custodian since 1995.<sup>3</sup> ASA requests an order to permit ASA to amend its custodian agreement with Chase and modify certain conditions of the Prior Orders to the extent they involve the custodian to more closely reflect current global custody standards for registered investment companies organized in the United States ("U.S. funds").

#### *Applicants' Legal Analysis*

1. Section 7(d) of the Act prohibits an investment company organized outside the U.S. ("foreign fund") from making a public offering of its securities in the U.S., but authorizes the Commission by order to permit a foreign fund to register under the Act and make a public offering of its securities in the U.S. if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible

effectively to enforce the provisions of [the Act] against such company and that the issuance of such order is otherwise consistent with the public interest and protection of investors." Rule 7d-1 under the Act sets forth the conditions that an investment company organized in Canada must satisfy in order to receive an order under section 7(d) of the Act. Applicants seek an order under section 7(d) to permit the Reorganization and allow ASAB to register under the Act, subject to conditions that, among other things, would require ASAB to comply with substantially all of rule 7d-1 under the Act.

2. Applicants state that ASA's board of directors (the "Board") considered reincorporating ASA in the U.S. This alternative was rejected due principally to two significant adverse tax effects. First, ASA's shareholders would incur significant federal income tax consequences on an exchange of their ASA shares for shares of a domestic corporation. Because ASA is incorporated outside the U.S., it cannot take advantage of the tax-free reorganization provisions in the Internal Revenue Code of 1986 ("Code"). In addition, under Subchapter M of the Code, a regulated investment company ("RIC") that satisfies certain requirements may pass through all its income and gain to its shareholders and thus avoid the payment of federal taxes at the RIC level. One of the requirements under Subchapter M, however, is that a RIC may not have any accumulated undistributed income and gains that arose in a taxable year during which it was not subject to Subchapter M. Because any U.S. corporate successor to ASA would inherit all of ASA's undistributed income and gains accumulated while it was a South African company, it would have to distribute approximately \$127 million before the end of its first taxable year to qualify for RIC pass-through treatment. That distribution would amount to 34% of ASA's total assets.

3. Applicants state that the Board also considered reincorporating ASA in Canada. Although this alternative did not present the same adverse tax consequences as moving to the U.S., the Board concluded that it presented significant structural difficulties. In order to benefit from favorable tax treatment in Canada, ASA would have to qualify as either a mutual fund trust or a mutual fund corporation. To qualify as a mutual fund trust, ASA would have to meet certain asset diversification requirements that are incompatible with ASA's current portfolio holdings. To qualify as a mutual fund corporation,

ASA would have to issue redeemable securities, a requirement ASA cannot meet because it is a closed-end investment company. In addition, ASA is internally managed, an arrangement that applicants state does not appear to exist under Canadian regulations.

4. Applicants state that the requested order allowing the Reorganization and ASAB's registration under the Act meets the standards of section 7(d) due to ASA's unique circumstances, the fact that ASA has been complying with the Act since 1958 and ASAB will continue to comply with substantially all of the requirements of rule 7d-1 under the Act, and the sophistication and stability of the legal system in Bermuda. Applicants also state that, under the requested order, ASAB will not be exempt from any provisions of the Act.

5. Applicants state that certain of the conditions and arrangements of rule 7d-1 are incorporated as conditions of the requested order, which are designed to ensure that it is both legally and practically feasible effectively to enforce the provisions of the Act against ASAB. Applicants also note that, since 1958, ASA has received the Custody Orders that address, among other things, the arrangements governing the custody of its assets. The Custody Orders exempted ASA from the requirement under rule 7d-1 that a foreign fund's assets be maintained in the U.S. in the custody of a U.S. bank. Under the Custody Orders, ASA is required to maintain at least 5% of its total assets in the U.S. in the custody of a U.S. bank, and may, subject to the 5% requirement, maintain up to 100% of its eligible securities in a central securities depository in South Africa ("CSD").<sup>4</sup> ASA currently does not maintain assets in any foreign country except South Africa.<sup>5</sup> Applicants state that, under the requested order, ASAB will maintain at least 20% of its assets in the U.S. Otherwise, applicants state that ASAB's custody arrangements would be the same as those the Commission previously had approved for ASA with

<sup>4</sup> The CSD Order, supra note 1. The Custody Orders have permitted ASA to keep up to 5% of its assets in rand-denominated interest bearing accounts in South Africa and up to 3% of its assets in South Africa in short-term rand denominated investments issued or guaranteed by the Republic of South Africa. The Custody Orders have also permitted ASA to maintain \$200,000 in cash in a checking account with a South African bank to cover administrative expenses. ASA currently maintains this account with Nedbank Limited.

<sup>5</sup> The Custody Orders have permitted ASA to maintain up to 5% of its assets in each of Great Britain, Japan, Canada, Australia, and Switzerland, if removal of these securities to the U.S. becomes either prohibited by law or financially impracticable.

<sup>2</sup> The Reorganization is subject to approval by ASA's shareholders. Applicants plan to mail the proxy statement/prospectus early in October 2004, with a shareholder meeting to be held in early to mid-November 2004.

<sup>3</sup> The Standard Bank of South Africa Limited ("Standard Bank") has served as ASA's South African subcustodian since August 1995 and will serve as ASAB's South African subcustodian.

respect to the location of ASAB's assets.<sup>6</sup>

6. Applicants further state that the Bermuda legal system is founded upon the English common law, the doctrines of equity, and Bermuda statute law. Many of the provisions of the Bermuda Companies Act 1981 are derived from the English Companies Act 1948. Bermuda's judicial system also is similar to that of the United Kingdom. Applicants state that the duties of directors and the rights of shareholders under Bermudian law generally are comparable to those contained in state law in the U.S. The extradition treaty between the U.S. and the United Kingdom also is applicable to Bermuda. Applicants represent that, as is the case in South Africa, Bermuda law permits ASAB to subject itself to the provisions of the Act and that it will be legally and practically feasible effectively to enforce the provisions of the Act against ASAB after the reorganization. Moreover, Bermuda law will permit ASAB to be subject to the same investor protections found in the Act as South African law permitted ASA.

7. Applicants state that ASAB's charter and bylaws taken together will contain, in effect, the substantive provisions of the Act applicable to closed-end investment companies, which provisions ASAB has agreed may be enforced as a matter of contract right in the U.S. and Bermuda by ASAB's shareholders. ASAB submits that the undertakings and agreements contained in the application constitute a contract among ASAB, the Commission, and ASAB's shareholders under which ASAB and its present and future officers, directors, investment advisers, and principal underwriters are required to comply with the Act. Other undertakings and agreements contained in the application are designed to facilitate the enforcement of the Act by the Commission or ASAB's shareholders in appropriate courts of the U.S. or Bermuda, including, among other things, an agreement that ASAB's present and future directors, officers, or investment advisers who are not residents of the U.S. will designate ASAB's custodian as an agent in the U.S. for service of process.

8. ASA and ASAB seek to amend certain conditions of the Prior Orders

<sup>6</sup> Applicants state that ASAB will maintain the cash account in South Africa with Nedbank Limited until ASA's affairs have been wound up, which could take up to a year. Any cash remaining in the account following ASA's termination will be placed by ASAB in the custody of Chase in the U.S. ASAB does not intend to maintain a cash account in either South Africa or Bermuda for its own administrative expenses.

with respect to certain responsibilities of the custodian. Specifically, they seek to (a) delete the condition requiring the custodian to comply with the charter and bylaws of ASA or ASAB; (b) modify a condition so that the shareholders of ASA and ASAB will not have the status of third party beneficiaries to any agreement between the custodian and ASA or ASAB; (c) modify another condition so that only the Commission will have the right to initiate a proceeding, based on the custodian's violation of the Act or the requested order, for the revocation of the requested order or for the liquidation of ASA or ASAB and a distribution of assets; and (d) modify another condition so that the custodian will no longer be required to monitor applicants' portfolio transactions itself, but will agree not to transfer ASA or ASAB's assets unless the instructions contain the written approval of the Chief Compliance Officer (as defined below).<sup>7</sup>

9. Applicants note that custodians are not usually required to monitor compliance with a U.S. fund's organizational documents and assert that U.S. fund shareholders generally are not considered third-party beneficiaries of the custody contracts of their U.S. funds. Applicants state that the Commission will retain the ability to initiate proceedings based on a custodian's violation of the Act or the requested order, and the custodian will continue to perform certain duties designed to ensure U.S. jurisdiction, e.g., act as agent for service of process on non-residents and settle certain portfolio transactions in the U.S. Applicants further state that the compliance-related duties historically performed by the custodian will be performed instead by a chief compliance officer appointed by the Board in accordance with rule 38a-1 under the Act ("Chief Compliance Officer") or a registered public accountant.<sup>8</sup> Applicants thus assert that the proposed conditions will continue to ensure that it is both legally and practically feasible effectively to enforce the provisions of the Act against ASA and ASAB.

<sup>7</sup> ASAB's proposed conditions reflect these changes. ASA would reflect these changes by replacing conditions 4, 6, 8 and 20 of the Prior Orders with proposed conditions 4, 6, 8 and 20 below and adding proposed conditions 28, 29, 30 and 31.

<sup>8</sup> Under the proposed conditions, the responsibility for monitoring for affiliated transactions is placed on the Chief Compliance Officer. The registered public accountants of ASA and ASAB also will review procedures for ensuring that they are in compliance with the conditions governing the location of their assets.

10. Applicants submit that the undertakings and agreements contained in the application (including those required under rule 7d-1) and the Bermuda legal system, are special arrangements supporting the issuance of the requested order to ASAB under section 7(d) of the Act. Applicants further submit that the requested order is consistent with the public interest and the protection of investors due to the special nature of ASAB's circumstances, including the fact that ASA has been registered under section 7(d) of the Act since 1958, the recently imposed significant adverse tax consequences for ASA in South Africa, and the uniquely adverse tax consequences for ASA if it were to reincorporate in the U.S.

#### *ASAB's Conditions*

ASAB agrees that any order granting the requested relief will be subject to the following conditions:<sup>9</sup>

1. Chase will serve as ASAB's custodian and will continue to meet the qualifications of a custodian under section 17(f) of the Act, and Standard Bank will serve as Chase's subcustodian in South Africa. As long as Standard Bank holds ASAB's assets, Standard Bank will designate Chase as its agent for service of process in the U.S. ASAB will comply with rule 17f-5 under the Act as if it were a registered management investment company organized or incorporated in the U.S. with respect to any of its assets held by eligible foreign custodians (including Standard Bank and the CSD) or overseas branches of U.S. banks (including Chase) outside the U.S.

2. The Board will serve as foreign custody manager and will not delegate such functions to its custodian or any other person.

3. ASAB will seek an order of the Commission prior to any amendment of its custodian agreement with its custodian.

4. ASAB will cause each present and future officer, director, investment adviser, and principal underwriter of ASAB to enter into an agreement ("Agreement") (to be filed by ASAB with the Commission when that person assumes office), which will provide that each person agrees: (a) To comply with ASAB's charter and bylaws, the Act and the rules of the Commission under the Act, and the undertakings and agreements contained in the application as applicable to each person and as each

<sup>9</sup> The terms "eligible foreign custodian," "U.S. bank" and "foreign custody manager" used in the conditions have the same meaning as defined in rule 17f-5 under the Act.

may be amended from time to time, as applicable to each person; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order, and (d) each Agreement constitutes a contract between the person and ASAB and the shareholders of ASAB with the intent that ASAB's shareholders will be beneficiaries of and will have the status of parties to the Agreement so as to enable them to maintain actions at law or in equity within the U.S. or Bermuda. In addition, each Agreement of each officer and director of ASAB will contain provisions similar to those contained in condition 20 below.<sup>10</sup>

5. So long as ASAB is registered under the Act, ASAB's charter and bylaws, together, will contain in substance the provisions required by rule 7d-1(b)(8) under the Act, and neither the charter nor the bylaws will be changed or amended in any manner inconsistent with rule 7d-1(b)(8) under the Act or the Act and the rules and regulations under the Act, unless authorized by the Commission.

6. ASAB's custodian will not transfer any assets of ASAB unless the instructions it receives from ASAB include the written approval of ASAB's Chief Compliance Officer. ASAB will submit instructions relating to any transfer of assets to its Chief Compliance Officer, who will review them prior to the submission of any approved instructions to ASAB's custodian. ASAB's Chief Compliance Officer will not approve a transfer of assets if an agent, broker-dealer, or counterparty is an affiliated person of ASAB or an affiliated person of any director, officer, or investment adviser of ASAB, unless the transaction is of a type permitted by the Act or any regulation under the Act or specifically permitted by order of exemption issued under the Act. In addition to providing any other information relevant to the Chief Compliance Officer's review, ASAB will require each of its officers, directors,

and investment advisers to transmit quarterly a list of affiliated persons or a statement that there has been no change since the last list so transmitted to ASAB's Chief Compliance Officer. No person will qualify to serve as a director or officer of ASAB until he or she has transmitted to ASAB a list of his or her affiliated persons, as that term is defined in section 2(a)(3) of the Act.

7. Prior to acquiring the assets of ASA, ASAB will furnish to the Commission a list of persons affiliated with ASAB and will furnish revisions of such list, if any, concurrently with the filing of periodic reports required to be filed under the Act. Such revised lists will include persons affiliated with any future investment adviser or principal underwriter of ASAB.

8. The chief executive officer of ASAB, a majority of the directors of ASAB, a majority of the officers, and the Chief Compliance Officer of ASAB will be both citizens and residents of the U.S.

9. ASAB will hold all of its shareholder meetings in the U.S.

10. ASAB will maintain in the U.S. a transfer agent for transfer of its shares, and a registrar for the registration of its shares.

11. ASAB will file, and will cause each of its present or future directors, officers, or investment advisers who is not a resident of the U.S. to file with the Commission irrevocable designation of ASAB's custodian as an agent in the U.S. to accept service of process in any suit, action, or proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission, or to enforce any right or liability based upon ASAB's charter or bylaws, contracts, or the respective undertakings and agreements of any of these persons required by the terms and conditions of the requested order, or which alleges a liability on the part of any of these persons arising out of their services, acts, or transactions relating to ASAB.

12. After receipt of the requested order, ASAB will file with the Commission a copy of the subcustodian agreement that irrevocably designates ASAB's custodian as an agent in the U.S. to accept service of process in any suit, action, or proceeding (collectively, "Proceeding") before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the subcustodian agreement with Standard Bank ("Subcustodian Agreement"), or to enforce any right or liability ("Liability") based on the Subcustodian Agreement or which alleges a liability on the part of Standard Bank arising out

of its services, acts, or transactions under the Subcustodian Agreement relating to ASAB's assets. This designation will automatically terminate upon Standard Bank ceasing to hold ASAB's assets, except as to a Proceeding or a Liability based on an action or inaction of Standard Bank prior to Standard Bank having ceased holding ASAB's assets.

13. ASAB will perform every action and thing necessary to cause and assist the custodian of its assets to distribute the same, or the proceeds, if the Commission or a court of competent jurisdiction will have so directed by final order.<sup>11</sup> ASAB also will perform every action and thing necessary to cause and assist its shareholders or the Commission to collect (a) any monetary amount specified in a Commission order or (b) a final judgment entered by a court of competent jurisdiction.

14. ASAB will take all steps necessary to insure that it will be listed on the NYSE, including the publishing of financial statements and other information required by the NYSE for the benefit of holders of the shares listed on the NYSE and the performance of all the covenants contained in its listing agreement.

15. The Commission, in its discretion, may revoke its order permitting registration of ASAB and the public offering of its securities if the Commission finds, after notice and opportunity for hearing, that there has been a violation of the requested order or the Act and may determine whether distribution of ASAB's assets is necessary or appropriate in the interests of investors and may so direct.

16. ASAB waives any counsel fees to which it may be entitled and waives security for costs in any action brought against it in Bermuda by any shareholder based on its charter or bylaws or any of the undertakings and agreements contained in the application. ASAB will cause each of its present or future directors who is a non-resident of the U.S. to make similar waivers.

17. ASAB will promptly notify the Commission in the event that there is any change in Bermudian law that will be contrary to any provision of the Act or detrimental to or inconsistent with the protection afforded by the undertakings and agreements contained in the application.

18. ASAB's use of the CSD will comply with rule 17f-7 under the Act as if ASAB were a registered

<sup>10</sup> ASAB acknowledges that: (a) every agreement and undertaking of ASAB, its officers, directors, investment adviser, and principal underwriters contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASAB, the Commission, and ASAB's shareholders with the same intent as set forth in condition 4 above; and (b) the failure by ASAB or any of the persons listed above to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

<sup>11</sup> A court of competent jurisdiction means any U.S. federal court that has jurisdiction to issue such an order.

management investment company organized or incorporated in the U.S.

19. Any shareholder of ASAB or the Commission, on its own motion or on request of any of ASAB's shareholders, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASAB; or (b) before a court of competent jurisdiction for the liquidation of ASAB and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASAB, its officers, directors, investment adviser, or principal underwriter has violated any provision of the Act or the requested order.

20. Any shareholder of ASAB will have the right to bring suit at law or equity, in any court of the U.S. or Bermuda having jurisdiction over ASAB, its assets, or any of its officers or directors to enforce compliance by ASAB, its officers and directors with any provision of ASAB's charter or bylaws, the Act, the rules under the Act, or the undertakings and agreements required by the conditions of the requested order, in so far as applicable to these persons. The court may appoint a trustee or receiver of ASAB with all powers necessary to implement the purposes of the suit, including the administration of the estate, the collection of corporate property including choses-in action, and distribution of ASAB's assets to its creditors and shareholders. ASAB and its officers and directors waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of ASAB to bring such suit, reserving, however, their right to maintain that they have complied with these provisions, undertakings and agreements, and otherwise to dispute the suit on its merits. ASAB and its officers and directors also agree that any final judgment or decree of any U.S. court may be granted full faith and credit by a court of competent jurisdiction of Bermuda and consent that the Bermudian court may enter judgment or decree on ASAB at the request of any shareholder, receiver, or trustee of ASAB.

21. ASAB will settle its purchases and sales of portfolio securities in the U.S. by use of the mails or means of interstate commerce, except for: (a) Purchases and sales on an "established securities exchange" (defined as a national securities exchange as defined in section 2(a)(26) of the Act, the JSE Securities Exchange South Africa, the

London Stock Exchange, the Tokyo Stock Exchange, the Toronto Stock Exchange, the Australian Stock Exchange Limited, and the Effektenborsverein Zurich Exchange (collectively the "Established Exchanges") and (b) purchases and sales, through its custodian or its custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities, or CSD-eligible securities. Assets purchased on an Established Exchange will be maintained in the U.S. with ASAB's custodian, unless prohibited by law or regulation or financially impracticable as provided in condition 24 below.

22. Contracts of ASAB, other than those executed on an Established Exchange which do not involve affiliated persons, will provide that: (a) The contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, each as amended, if the subject matter of the contracts is within the purview of these acts; and (b) in effecting the purchase or sale of assets, the parties to the contracts will utilize the U.S. mails or means of interstate commerce.

23. ASAB will keep at least 20% of its assets in the U.S. in the custody of a U.S. bank ("20% Requirement"). ASAB's remaining assets (which may include U.S. dollars invested in time deposits and bank certificates of deposit) will be kept in the custody of such a U.S. custodian, except:

a. Subject to the 20% Requirement, up to 100% of its CSD-eligible securities may be kept in the CSD through its custodian and subcustodian;

b. \$200,000 may be kept in cash to cover administrative expenses and expenses related to the winding up of ASA's affairs in South Africa, to be kept in a checking account with a South African bank;

c. Up to 3% of its assets may be kept in South Africa in short-term rand-denominated investments issued or guaranteed by the Republic of South Africa; and

d. Up to 5% of its assets may be kept in rand-denominated interest bearing bank accounts with eligible foreign custodians or overseas branches of U.S. banks.

24. If removal of securities purchased on the Established Exchanges becomes either prohibited by law or regulation or financially impracticable, up to 5% of ASAB's assets may be held by an eligible foreign custodian or overseas branch of ASAB's custodian in each of

London, Japan, Australia, Switzerland, and Canada.

25. If an eligible foreign custodian or an overseas branch of the custodian is to be appointed as subcustodian, ASAB will comply with the requirements of rule 17f-5 under the Act prior to the purchase of securities on an Established Exchange.

26. ASAB will withdraw its assets from the care of a subcustodian as soon as practicable, and in any event within 180 days of the date when a majority of the Board makes the determination that a particular subcustodian may no longer be considered eligible under rule 17f-5 under the Act or may no longer be considered an overseas branch of the custodian, or that continuance of the subcustodian arrangement would not be consistent with the best interests of ASAB and its shareholders.

27. ASAB will cause each custodian of ASAB to enter into an Agreement (to be filed by ASAB with the Commission when that person assumes office), which will provide that each custodian agrees: (a) To comply with the Act and the rules of the Commission under the Act and the undertakings and agreements contained in the application as applicable to the custodian and as each may be amended from time to time, as applicable to the custodian; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; and (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order.<sup>12</sup>

28. So long as ASAB is registered under the Act, ASAB's custody contract with its custodian will provide that the custodian will: (a) Consummate all purchases and sales of securities by ASAB through the delivery of securities and receipt of cash, or vice versa as the case may be, within the United States, except for (i) purchases and sales on the Established Exchanges, and (ii) purchases and sales, through ASAB's custodian or custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities, or CSD-eligible securities; and (b) distribute ASAB's assets, or the proceeds thereof, to ASAB's creditors

<sup>12</sup> ASAB acknowledges that: (a) Every agreement and undertaking of ASAB and its custodian contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASAB and the Commission; and (b) the failure by ASAB or the custodian to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in conditions 15, 19, and 29.

29. With respect to an alleged violation of the Act or the requested order by ASAB's custodian, the Commission, on its own motion, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASAB; or (b) before a court of competent jurisdiction for the liquidation of ASAB and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASAB's custodian has violated any provision of the Act or the requested order.

30. ASAB will adopt procedures reasonably designed to ensure that ASAB complies with conditions 21, 23, and 24 regarding the location of ASAB's assets. For two years following the issuance of an order granting the requested relief, the registered public accountant for ASAB shall prepare an annual report that evaluates ASAB's assertion that it has established procedures reasonably designed to achieve compliance with conditions 21, 23, and 24 regarding the location of ASAB's assets. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N-SAR, as such Statements or Form may be revised, amended, or superseded from time to time. After the final report is filed, ASAB's registered public accountant, in connection with its annual audit of ASAB's financial statements, will continue to review ASAB's compliance with conditions 21, 23, and 24 regarding the location of ASAB's assets and its review will form the basis, in part, of the registered public accountant's report on internal controls in Form N-SAR.

#### *ASA's Conditions*

ASA agrees that the Prior Orders and any order granting the relief it requests will be subject to the conditions of the Prior Orders (other than conditions 4, 6, 8 and 20) and the following conditions:

4. ASA will cause each present and future officer, director, investment adviser, and principal underwriter of ASA to enter into an agreement ("Agreement") (to be filed by ASA with the Commission when that person assumes office), which will provide that each person agrees: (a) To comply with ASA's charter and bylaws, the Act and

the rules of the Commission under the Act, and the undertakings and agreements contained in the application as applicable to each person and as each may be amended from time to time, as applicable to each person; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order, and (d) each Agreement constitutes a contract between the person and ASA and the shareholders of ASA with the intent that ASA's shareholders will be beneficiaries of and will have the status of parties to the Agreement so as to enable them to maintain actions at law or in equity within the U.S. or South Africa. In addition, each Agreement of each officer and director of ASA will contain provisions similar to those contained in condition 20 below.<sup>13</sup>

6. ASA's custodian will not transfer any assets of ASA unless the instructions it receives from ASA include the written approval of ASA's Chief Compliance Officer. ASA will submit instructions relating to any transfer of assets to its Chief Compliance Officer, who will review them prior to the submission of any approved instructions to ASA's custodian. ASA's Chief Compliance Officer will not approve a transfer of assets if an agent, broker-dealer, or counterparty is an affiliated person of ASA or an affiliated person of any director, officer, or investment adviser of ASA, unless the transaction is of a type permitted by the Act or any regulation under the Act or specifically permitted by order of exemption issued under the Act. In addition to providing any other information relevant to the Chief Compliance Officer's review, ASA will require each of its officers, directors, and investment advisers to transmit quarterly a list of affiliated persons or a statement that there has been no change since the last list so transmitted to ASA's Chief Compliance Officer. No person will qualify to serve as a director or officer of ASA until he or she has

<sup>13</sup> ASA acknowledges that: (a) Every agreement and undertaking of ASA, its officers, directors, investment adviser, and principal underwriters contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASA, the Commission, and ASA's shareholders with the same intent as set forth in condition 4 above; and (b) the failure by ASA or any of the persons listed above to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

transmitted to ASA a list of his or her affiliated persons, as that term is defined in section 2(a)(3) of the Act.

8. The chief executive officer of ASA, a majority of the directors of ASA, a majority of the officers, and the Chief Compliance Officer of ASA will be both citizens and residents of the U.S.

20. Any shareholder of ASA or the Commission, on its own motion or on request of any of ASA's shareholders, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASA; or (b) before a court of competent jurisdiction for the liquidation of ASA and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASA, its officers, directors, investment adviser, or principal underwriter has violated any provision of the Act or the requested order.

28. ASA will cause each custodian of ASA to enter into an Agreement (to be filed by ASA with the Commission when that person assumes office), which will provide that each custodian agrees: (a) To comply with the Act and the rules of the Commission under the Act and the undertakings and agreements contained in the application as applicable to the custodian and as each may be amended from time to time, as applicable to the custodian; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; and (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order.<sup>14</sup>

29. So long as ASA is registered under the Act, ASA's custody contract with its custodian will provide that the custodian will: (a) Consummate all purchases and sales of securities by ASA through the delivery of securities and receipt of cash, or vice versa as the case may be, within the United States, except for (i) purchases and sales on the Established Exchanges, and (ii) purchases and sales, through ASAB's custodian or custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities,

<sup>14</sup> ASA acknowledges that: (a) Every agreement and undertaking of ASA and its custodian contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASA and the Commission; and (b) the failure by ASA or the custodian to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

or CSD-eligible securities; and (b) distribute ASA's assets, or the proceeds thereof, to ASA's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in conditions 15, 20, and 30.

30. With respect to an alleged violation of the Act or the requested order by ASA's custodian, the Commission, on its own motion, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASA; or (b) before a court of competent jurisdiction for the liquidation of ASA and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASA's custodian has violated any provision of the Act or the requested order.

31. ASA will adopt procedures reasonably designed to ensure that ASA complies with conditions 22, 24, and 25 regarding the location of ASA's assets. For two years following the issuance of an order granting the requested relief, the registered public accountant for ASA shall prepare an annual report that evaluates ASA's assertion that it has established procedures reasonably designed to achieve compliance with conditions 22, 24, and 25 regarding the location of ASA's assets. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N-SAR, as such Statements or Form may be revised, amended, or superseded from time to time. After the final report is filed, ASA's registered public accountant, in connection with its annual audit of ASA's financial statements, will continue to review ASA's compliance with conditions 22, 24, and 25 regarding the location of ASA's assets and its review will form the basis, in part, of the registered public accountant's report on internal controls in Form N-SAR.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2018 Filed 9-1-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26583]

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 27, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 21, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. For Further Information Contact: Diane L. Titus at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549-0504.

#### **Eaton Vance Insured Minnesota Municipal Bond Fund (Formerly Eaton Vance Insured Minnesota Municipal Bond Fund I)**

[File No. 811-21223]

#### **Eaton Vance Insured Arizona Municipal Bond Fund (Formerly Eaton Vance Insured Arizona Municipal Bond Fund I)**

[File No. 811-21228]

*Summary:* Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

*Filing Date:* The applications were filed on August 10, 2004.

*Applicants' Address:* the Eaton Vance Building, 255 State St., Boston, MA 02109.

#### **IQ Rising Interest Rate Fund Inc.**

[File No. 811-21592]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Date:* The applicant was filed on August 19, 2004.

*Applicant's Address:* 800 Scudders Mill Rd., Plainsboro, NJ 08536.

#### **Eaton Vance Limited Duration Income Opportunity Fund**

[File No. 811-21393]

#### **Eaton Vance Limited Duration Income Fund II**

[File No. 811-21406]

#### **Eaton Vance Tax-Advantaged Dividend Growth Fund**

[File No. 811-21450]

*Summary:* Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

*Filing Date:* The applicants were filed on August 17, 2004.

*Applicants' Address:* The Eaton Vance Building, 255 State St., Boston, MA 02109.

#### **J.P. Morgan Atlas Global Long/Short Equity Fund, L.L.C.**

[File No. 811-21305]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on July 20, 2004, and amended on August 10, 2004.

*Applicant's Address:* 522 Fifth Ave., 10th Floor, New York, NY 10036.