

or promotional activities, Applicants submit that this language of Section 2(a)(35) is another indication that not treating such federal tax burden charge as "sales load" is consistent with the policies of the 1940 Act.

10. Applicants further assert that Section 2(a)(35) excludes from the definition of "sales load" under the 1940 Act deductions from premiums for "issue taxes." Applicants submit that the exclusion from "sales load" of charges attributable to federal tax obligations is consistent with the policies of the 1940 Act.

11. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, CG Life would have to request and obtain exemptive relief for each Contract to be issued through one of the Accounts. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

12. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for CG Life or Future Accounts to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair the ability of CG Life and the Future Accounts to take advantage fully of business opportunities as those opportunities arise.

13. Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If CG Life and the Future Accounts were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for CG Life and the Future Accounts.

Conditions for Relief

1. Applicants agree to comply with the following conditions for relief.

a. CG Life will monitor the reasonableness of the federal tax burden charge to be deducted pursuant to the requested exemptive relief.

b. The registration statement for each Contract under which the federal tax burden charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge;

and (iii) state that the charge is reasonable in relation to CG Life's increased federal income tax burden under Section 848 of the Code resulting from the receipt of premiums.

c. The registration statement for each Contract under which the federal tax burden charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return that is used in calculating the federal tax burden charge and the relationship that such charge has to CG Life's cost of capital; and (iii) the appropriateness of the factors taken into account by CG Life in determining the after tax rate of return.

2. Applicants undertake to rely on the exemptive relief requested herein with respect to Future Contracts only if such contracts are substantially similar in all material respects to the Contracts described in the Application.

Conclusion

For the reasons summarized above, Applicants represent that the requested relief from Sections 27(c)(2) of the 1940 Act and Rule 6e-3(T)(c)(4)(v) thereunder is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-22579 Filed 9-4-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22181; 812-10216]

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

August 28, 1996.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First American Investment Funds, Inc. ("FAIF"), First American Funds, Inc. ("FAF") (collectively, the "Funds"), First Trust National Association ("First Trust"), and First Bank National Association ("First Bank").

RELEVANT ACT SECTIONS: Order requested under rule 17d-1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The requested order would permit the Funds to pay First Trust, and First Trust to accept, fees for acting as lending agent with

respect to securities lending transactions by the Funds.

FILING DATES: The application was filed on June 21, 1996, and amended on August 22, 1996.

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 September 23, 1996, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: the Funds, 680 East Swedesford Road, Wayne, PA 19087; First Trust, 180 East Fifth Street, St. Paul, MN 55101; and First Bank, 601 Second Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942-0572, or Mercer E. Bullard, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. FAIF and FAF are registered under the Act as open-end management investment companies and are incorporated under the laws of the States of Maryland and Minnesota, respectively. FAIF has twenty separate series and FAF has three. First Trust serves as custodian for each Fund and First Bank is the investment adviser for each Fund. First Trust and First Bank are wholly-owned subsidiaries of First Bank System, Inc. ("FBS").

2. Each Fund and its series, with one exception, is currently permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. Since the Funds currently do not have the internal resources necessary to lend securities efficiently or effectively without the services of a third-party lending agent, First Bank has proposed that the Funds engage First Trust, or other third-party agents, to act

as lending agent for the Fund. The lending agent will be responsible for establishing contact with potential borrowers, monitoring daily the value of the loaned securities and collateral, requesting that borrowers add to the collateral when required, and performing other administrative functions. In addition, the lending agent would invest cash collateral in instruments pre-approved by First Bank.

3. The duties of the lending agent, as well as procedures governing the securities lending, will be included in the Fund's agreement with the lending agent or otherwise detailed in writing. The ultimate responsibility for determining which securities are available to be loaned and to whom the securities may be loaned will reside with First Bank, subject to parameters set forth in procedures approved by the Fund's board of directors. First Bank will monitor the lending agent to ensure that the securities loans are effected in accordance with procedures adopted by the Fund's board of directors. For its services, the lending agent will receive a pre-negotiated percentage of the lending fee or portion of the return on the investment of cash collateral received by a Fund. Applicants represent that the duties to be performed by the lending agent will be consistent with and not exceed the parameters set forth in *Norwest Bank*, a no-action letter issued by the staff of the Division of Investment Management (pub. Avail. May 25, 1995).

4. Each borrower of a Fund's securities will be required to tender collateral to be held by First Trust, or other custodian to the Fund, in the form of cash, securities issued or guaranteed by the United States Government, its agencies or instrumentalities, or irrevocable letters of credit issued by approved banks.

5. In transactions where the collateral consists of U.S. Government securities or bank letters of credit, the lending agent typically will negotiate on behalf of the Fund a lending fee to be paid by the borrower to the Fund. The borrower will deliver to the Fund's custodian U.S. Government securities or bank letters of credit equal to at least 100% of the securities loaned, which collateral will be supplemented to cover differences between the market value of the collateral and the market value of the loaned securities as necessary. At the termination of the loan, the borrower will pay to the Fund the lending fee, and the lending agent will receive its pre-negotiated percentage.

6. In transactions where the collateral consists of cash, the Fund typically will receive a portion of the return earned on

the investment of the cash collateral by or under the direction of First Bank. Depending on the arrangements negotiated with the borrower by the lending agent, a percentage of the return on the investment of the cash collateral may be remitted by the Fund to the borrower. Cash collateral delivered by the borrower will equal at least 100% of the portfolio securities loaned and will be supplemented to cover increases in the market value of the loaned securities, as necessary. Out of the amounts earned on the investment of the cash collateral, the borrower would first be paid the amount agreed upon, if any, and then, out of any remaining earnings, the lending agent would receive its pre-negotiated percentage. The Fund will bear the risk of loss of the collateral.

7. Applicants request an order to permit the Funds to pay First Trust, and First Trust to accept, fees in connection with First Trust's acting as lending agent in the manner described in the application. Applicants request that the relief sought also apply to any other registered investment company or series thereof which in the future may be created for which First Bank, or any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with First Bank, serves as investment adviser.

Applicants' Legal Analysis

1. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, or under common control with, such investment adviser. Under section 2(a)(3), First Bank, as investment adviser of each of the Funds, is an "affiliated person" of each Fund. Further, because First Trust and First Bank are under the common control of FBS, First Trust is an "affiliated person" of First Bank and, therefore, First Trust is an "affiliated person of an affiliated person" of each Fund. In addition, First Trust may be deemed to be an affiliated person of certain Funds because it and its affiliates hold of record more than 5% of the outstanding shares of these Funds.

2. Section 17(d) of the Act and rule 17d-1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The proposed lending transactions may be deemed to involve a joint transaction because First Trust as lending agent

would receive a percentage of the revenue generated by a Fund's securities lending program.

3. Rule 17d-1 authorizes the SEC to permit a proposed joint transaction. In determining whether to permit 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. For the reasons discussed below, applicants believe that the requested relief satisfies the standards for relief set forth in rule 17d-1.

4. Applicants believe that First Trust can provide lending agent services to the Funds in an efficient and profitable manner, and in a manner comparable to that of other potential lending agents. Applicants state that First Trust is experienced in securities lending services and has in place the personnel and systems necessary to provide services in an efficient and cost-effective manner. In addition, First Bank, as investment adviser to the Funds, will direct and monitor the activities of First Trust as lending agent.

5. Individual employees of First Trust who are involved in its securities lending activities may be "dual employees" of First Trust and First Bank. As employees of First Bank, such individuals also may be involved in the portfolio lending activities of First Bank, as investment adviser to the Funds. However, the individuals within First Bank, as investment adviser to the Funds, who will direct and monitor the activities of First Trust, as securities lending agent for the Funds, will not have operating or supervisory responsibility with respect to First Trust's securities lending activities.

6. Applicants propose that each Fund will adopt the following procedures to ensure that the fee arrangement and other terms governing the relationship between the Fund and First Trust will be fair:

a. In connection with the initial approval of First Trust as lending agent to the Fund, the board of directors of a Fund, including a majority of the directors who are not "interested persons" of the Fund within the meaning of the Act, will determine that (i) the contract with First Trust is in the best interests of the Fund and its shareholders; (ii) the services to be performed by First Trust are required by the Fund; (iii) the nature and quality of the services provided by First Trust are at least equal to those provided by others offering the same or similar

services; and (iv) the fees for First Trust'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 Fund's contract with First Trust for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the board of directors of each Fund, including a majority of the directors who are not "interested persons" of the Fund within the meaning of the Act, makes the findings referred to in paragraph (a) above.

c. In connection with the initial approval of First Trust as lending agent to a Fund, the board of directors will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the board of directors in making the findings referred to in paragraph (a) above.

d. The board of directors of each Fund, including a majority of the directors who are not "interested persons" of the Fund within the meaning of the Act, (i) will determine at each 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) will review no less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such 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.

Applicants' Conditions

Applicants will adhere to the following conditions:

1. No Fund may lend its portfolio securities to a borrower that is an affiliated person of the Fund, any adviser of the Fund, or First Trust, or to an affiliated person of any such person.

2. Except as set forth herein, the securities lending program of each Fund will comply with all present and future applicable SEC staff positions regarding securities lending arrangements, *i.e.*, with respect to the type and amount of collateral, voting of loaned securities, limitations on the percentage of portfolio securities on loan, prospectus disclosure, termination of loans, receipt of dividends or other distributions, and compliance with fundamental policies.¹

3. The approval of the board of directors of a Fund, including a majority of the directors who are not "interested persons" within the meaning of the Act, shall be required for the initial and subsequent approvals of First Trust's service as lending agent for the Funds, for the institution of all procedures relating to the securities lending programs of the Funds, and for any periodic review of loan transactions for which First Trust acted as lending agent.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-22578 Filed 9-4-96; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 22187; 812-9838]

GE Funds, et al.; Notice of Application

August 29, 1996.

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

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Elfun Trusts, Elfun Global Fund, Elfun Diversified Fund, Elfun Tax-Exempt Income Fund, Elfun Income Fund (collectively, the "Elfun Funds"), Variable Investment Trust ("Variable Trust"), GE S&S Program Mutual Fund, GE S&S Long-Term Interest Fund (collectively, all of the foregoing are the "Registered Investing Entities"), General Electric Pension Trust, GE Savings and Security (collectively, the previous two are the "Retirement Trusts"), GE Insurance Plan Trust, GE Medical Care Trust for Pensioners, GE General Relief and Loan Funds (collectively, the previous three are the "Welfare Trusts"), GE Investments International Fund, GE Investment International Fund—NYC, GE Investments Group Trust (collectively, the previous three are the "Group Trusts"), GE Investments

Canada Fund (the "Canada Fund"), GE Investment Realty Partners I, GE Investment Realty Partners II, GE Investment Realty Partners III, GE Investment Hotel Partners I (collectively, the previous four are the "Limited Partnerships") collectively, all of the foregoing are the "Investing Entities", GEI Short-Term Investment Fund (the "Investment Trust"), GE Investment Management Incorporated ("GEIM"), and General Electric Investment Corporation ("GEIC").

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1), under sections 6(c) and 17(b) that would grant an exemption from section 17(a), and under rule 17d-1 to permit certain transactions in accordance with section 17(d) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants request an order to permit the Investing Entities to purchase shares of the Investment Trust for cash management purposes.

FILING DATES: The applicant was filed on October 31, 1995 and amended on July 24, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, 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 September 24, 1996, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942-0572, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

¹ See, e.g., SIFE Trust Fund (pub. avail. Feb. 17, 1982).