available net long-term capital gains in certain of its fixed monthly distributions. As a result, the Fund states that it could be required to fund these monthly distributions with returns of capital (to the extent net investment income and net realized short-term capital gains are insufficient to cover a monthly distribution). The Fund further asserts that, to distribute all of its long-term capital gains within the limits in rule 19b–1, the Fund may be required to make total distributions in excess of the annual amount called for by the Distribution Policy or retain and pay taxes on the excess amount. The Fund asserts that the application of rule 19b–1 to the Fund's Distribution Policy may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The Fund submits that the concerns underlying section 19(b) and rule 19b–1 are not present in the Fund's situation. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Fund states that its Distribution Policy has been described in the Fund's periodic communications to its shareholders. The Fund further states that, to the extent required under rule 19a–1 under the Act, a separate statement showing the source of the distribution will accompany each distribution. In addition, a statement showing the amount and source of each monthly distribution during the year will be included with the Fund's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year).

4. The Fund submits that another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend (''selling the dividend''), when the dividend results in an immediate corresponding reduction in NAV and is, in effect, a return of the investor's capital. The Fund states that this concern does not apply to a closed-end management investment company, such as the Fund, that does not continuously distribute its shares.

5. The Fund states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. The Fund asserts that this concern is not present because the Fund will continue to make monthly distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the Fund believes that the requested relief satisfies this standard.

Applicant's Condition

The Fund agrees that the order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its common shares other than:

(i) A non-transferable rights offering to shareholders of the Fund, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization;

unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–5793 Filed 3–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24883; 812–12222]

Advantus Bond Fund, Inc. et al.; Notice of Application

March 2, 2001.

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

ACTION: Notice of an application under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Summary of the Application: Applicants seek an order to permit certain registered open-end investment companies to deposit their uninvested cash balances and their cash collateral in one or more joint accounts to be used to enter into short-term investments.

Applicants: Advantus Bond Fund, Inc., Advantus Cornerstone Fund, Inc., Advantus Enterprise Fund, Inc., Advantus Horizon Fund, Inc., Advantus Index 500 Fund, Inc., Advantus International Balanced Fund, Inc., Advantus Money Market Fund, Inc., Advantus Mortgage Securities Fund, Inc., Advantus Real Estate Securities Fund, Inc., Advantus Spectrum Fund, Inc., Advantus Venture Fund, Inc., and Advantus Series Fund, Inc. (collectively, the ''Companies''); Advantus Capital Management, Inc. (''Advantus Capital'').

Filing Dates: The application was filed on August 15, 2000, and amended on January 10, 2001.

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 tot he 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 27, 2001, 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, NW., Washington DC 20549–0609. Applicants, James D. Alt, Esq., Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Maura McNulty, Senior Counsel, at (202) 942–0621, or Mary Kay Frech, 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, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Each of the Companies is an open-end management investment company organized under Minnesota law and registered under the Act. One of the Companies, Advantus Series Fund, Inc., offers 19 series of shares through variable life insurance policies and annuity contracts issued by Minnesota Life Insurance Company (''Minnesota Life''). Each of the other Companies

offers series of shares directly to the public.

2. Advantus Capital, a wholly-owned subsidiary of Minnesota Life, is registered under the Investment Advisers Act of 1940.[1] Advantus Capital serves as investment adviser for each series of the Companies, subject to the general oversight of the Companies' boards of directors (the ''Boards''). With respect to several such series, Advantus Capital has engaged sub-advisers that are not affiliated with Advantus Capital or any of its affiliates. Wells Fargo Bank Minnesota, N.A. (''Wells Fargo'') serves as custodian for the assets of several of the Companies' series, and Bankers Trust Company serves as custodian for the assets of the other series. Neither custodian is affiliated with the Companies or Advantus Capital.

3. Applicants request that any relief granted pursuant to the application also apply to future series of the Companies and any other registered management investment company and each series thereof that is advised by Advantus Capital in the future (together with the existing series of the Companies, the ''Funds'').[2]

4. All of the existing Funds are authorized by their investment policies and restrictions to invest at least a portion of their uninvested cash balances in short-term liquid assets such as repurchase agreements, rated commercial paper, U.S. Government securities and other short-term debt obligations.

5. All of the existing Funds also are authorized to engage in securities lending transactions. In connection with these transactions, the Funds may receive collateral in the form of either cash (''Cash Collateral'') or securities. When Cash Collateral is received, it is expected to be invested in a manner consistent with customary securities lending practices. Wells Fargo serves as the securities lending agent for those funds that currently engage in securities lending transactions. Wells Fargo, in such capacity, and any other entity that may in the future act as securities lending agent for any of the Funds, is referred to as a ''Securities Lending Agent.'' [3]

6. Applicants propose to invest uninvested cash balances of the Funds that remain at the end of the trading day and cash for investment purposes (''Uninvested Cash''), and/or Cash Collateral (collectively, with Uninvested Cash, ''Cash Balances'') into one or more joint accounts (the ''Joint Accounts'') established at the Fund's custodian. The daily balances in the Joint Accounts would be invested only in the following types of investments: (a) Repurchase agreements ''collaterlized fully'' as defined in rule 2a–7 under the Act, [4] (b) interest-bearing or discounted commercial paper, including U.S. dollar-denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including government securities and variable rate demand notes, that constitute ''Eligible Securities'' as defined in rule 2a–7 under the Act (collectively, ''Short-Term Investments'').

7. Funds participating in a Joint Account will invest through the Joint Account only to the extent that, regardless of the Joint Accounts they would desire to invest in short-term liquid investments that are consistent with their respective investment objectives, policies and restrictions. A Fund's decision to use a Joint Account will be based on the same factors as its decision to make any other short-term liquid investment. The sole purposes of the Joint Accounts would be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for some or all Funds necessary to manage their respective Cash Balances.

8. Advantus Capital will be responsible for investing Cash Balances held by the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts in accordance with the procedures discussed below, and ensuring fair treatment of the participating Funds. Advantus Capital may establish guidelines for the investment of Cash Collateral received in connection with the participating Funds' securities lending transactions and may delegate the investment of such Cash Collateral to the Securities Lending Agent in accordance with any applicable Commission or staff guidelines. Advantus Capital will pre-approve securities for investment and the Securities Lending Agent will invest Cash Collateral only in investments that are pre-approved by Advantus Capital.

9. All investments of Cash Collateral through the Joint Accounts will comply with all present and future SEC or staff positions relating to the investment of cash collateral in connection with securities lending activities. Any repurchase agreements entered into through the Joint Accounts will comply with any applicable Commission or staff guidelines. 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 and its staff to the extent that such positions set forth different or additional requirements regarding repurchase agreements. If the SEC sets forth guidelines with respect to other Short-Term Investments, all investments made through the Joint Accounts will comply with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the Commission has issued an order authorizing the arrangement. In determining whether to grant such an order, the Commission considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the arrangement.

2. Under section 2(a)(3)(C) of the Act, each Fund may be deemed to be an ''affiliated person'' of each other Fund if each Fund were deemed to be under the common control of their investment adviser Advantus Capital. Applicants state that each Fund participating in a Joint Account and Advantus Capital, by managing the Joint Account, may be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d) of the Act. Applicants further state that each Joint Account may be deemed to be a ''joint enterprise

[1] For purposes of this application, the term ''Advantus Capital'' includes, in addition to such entity itself, any other entity controlling, controlled by or under common control with Advantus Capital that acts in the future as an investment adviser to the Companies or other registered management investment companies.

[2] Each entity that currently intends to rely on the requested order is named as an applicant. Any future series of the Companies and any other registered management investment companies or series thereof that are in the future advised by Advantus Capital that rely upon the requested order in the future will do so only in compliance with the terms and conditions of the application.

[3] No affiliated person of the Funds or of Advantus Capital will serve as a Securities Lending Agent unless applicants have received further appropriate exemptive relief from the SEC.

[4] Repurchase agreements will be entered into on a ''hold-in-custody'' basis (i.e., where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only if cash is received late in the business day and otherwise would be unavailable for investment.

or other joint arrangement'' within the meaning of rule 17d–1.

3. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants assert that no Fund would be in a less favorable position than any other Fund as a result of its participating in one or more Joint Accounts. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the participating Funds or Advantus Capital. Each Fund's liability on any Short-Term Investment invested in through the Joint Accounts will be limited to its interest in such Short-Term Investment.

4. Applicants state that the operation of the Joint Accounts could result in certain benefits to the Funds. The Funds may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert, it is possible to negotiate a rate of return on larger investments that is higher than the rate available on smaller investments. In addition, applicants state that the aggregation of Cash Balances in a Joint Account may make more investment opportunities available to the Funds and may reduce the possibility that a Fund's Cash Balance would remain uninvested. Finally, the Joint Accounts may result in certain administrative efficiencies and lessen the potential for error by reducing the number of trade tickets and cash wires that counterparties and the Fund's custodian and administrator must process.

5. Applicants state that although Advantus Capital may realize some benefit through administrative convenience and reduced clerical costs, prior to a Fund's participating in a Joint Account, the Boards will determine that the Funds will be the primary beneficiaries of the Joint Accounts due to the potential for higher returns and increased efficiencies through the use of Joint Accounts.

Applicants' Conditions

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

1. The Joint Accounts will not be distinguishable from any other accounts maintained by the Funds at their custodian except that Cash Balances from the Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have 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 of uninvested Cash Balances.

2. Cash Balances in the Joint Accounts will be invested in Short-Term Investments as directed by Advantus Capital (or, in the case of Cash Collateral, the Securities Lending Agent in instruments pre-approved by Advantus Capital). Uninvested Cash in the Joint Accounts will be invested in repurchase agreements that have a remaining maturity of 60 days or less and other Short-Term Investments that 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 will be invested in Short-Term Investments that have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable Commission releases, rules, or orders.

4. Each Fund valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which the Fund has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to assure that there will be no opportunity for any Fund to use any part of a 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, although each Fund will be permitted to draw down its entire balance at any time, provided that Advantus Capital determines that such draw-down will have no significant adverse impact on any other Fund participating in that Joint Account. Each Fund's decision to invest in a Joint Account will be solely at its option, and no Fund will be obligated to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in a Joint Account, including interest payable on such assets in the Joint Account.

6. Advantus Capital will administer the investment of Cash Balances in and the operation of the Joint Accounts as part of its general duties under its existing or any future investment advisory agreements with the Funds and will not collect any additional or separate fees for advising any Joint Account.

7. 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.

8. Each Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, each Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the adopted procedures and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Any Short-Term Investment made through the Joint Accounts will satisfy the investment policies and restrictions of all Funds participating in that investment.

10. Advantus Capital, each Fund, and custodian for each Fund will maintain records documenting, for any given day, each Fund's aggregate investment in a Joint Account and each Fund's pro rata share of each investment made through such Joint Account. The records maintained for each Fund shall be maintained in conformity with section 31 of the Act and the rules and regulation thereunder.

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

such sale and partition of the investments in the Joint Account.

12. 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 15% or, the case of a money market fund, more than 10% (or such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, and any similar restriction set forth in the Fund's investment policies and restrictions, if Advantus Capital cannot sell the instrument, or the Fund's fractional interest in such instruments, pursuant to the preceding condition.

13. Not every Fund participating in Joint Account will necessarily have its Cash Balances invested in every Joint Account. However, to the extent a Fund's Cash Balances are applied to a particular Joint Account, the Fund will participate in and own a proportionate share of the investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such investment in such Joint Account purchased with Cash Balances contributed by the Fund.

14. Each Joint Account will be established as a separate cash account on behalf of the Funds participating in such Joint Account at the custodian for one or more of the Funds (the ''Joint Account Custodian'' with respect to such Joint Account). Each Fund may deposit daily all or a portion of its Cash Balances into the Joint Accounts. Each Fund whose regular custodian is a custodian other than the Joint Account Custodian with respect to the applicable Joint Account and that wishes to participate in such Joint Account will appoint such Joint Account Custodian as sub-custodian for the limited purposes of (a) receiving and disbursing Cash Balances; (b) holding Short-Term Investments; and (c) holding any collateral received from a transaction effected through such Joint Account. All Funds that so appoint such Joint Account Custodian will have taken all necessary actions to authorize the Joint Account Custodian as its legal custodian, including all actions required under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–5792 Filed 3–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44039; File No. SR–NASD–01–04]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Dual Reporting of Transactions in Certain Fixed Income Securities

March 5, 2001.

I. Introduction

On January 5, 2001, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to dual reporting of transactions in certain fixed income securities. The **Federal Register** published the proposed rule change for comment on February 2, 2001.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In conjunction with the Commission's approval of rules governing the NASD's Trade Reporting and Comparison Entry Service (''TRACE Rules'' or ''Rule 6200 Series'') (SR–NASD–99–65).[4] NASD is proposing to amend one of the TRACE Rules, NASD Rule 6230(b). The proposed amendment requires a member to submit a trade report to the NASD if the member is either the buy- or the sell-side of a member-to-member transaction in an eligible fixed income security under the Rule 6200 Series. Rule 6230(b) currently requires only the member who represents the sell-side to submit a trade report to the NASD.

The NASD is proposing the amendment to Rule 6230(b) to provide for reporting by both the buy- and sell-sides of a transaction by two NASD members (''dual trade reporting'') in order to improve the quality of the transaction data that the NASD collects for surveillance purposes. The amendment is proposed in lieu of previously proposed Rule 6231, which would have required that both sides to a trade submit to the NASD duplicate copies of the clearing reports submitted to their registered clearing agency.[5] The NASD proposed Rule 6231 in Amendment No. 2 to SR–NASD–99–65, but withdrew it in Amendment No. 4 in response to industry comment that it was overly burdensome.[6] Although the proposed amendment to Rule 6230(b) requires the dual real-time reporting to sell-side and buy-side trade information, only the sell-side information will be disseminated, thus avoiding the dissemination of two trade reports for the same trade. The buy-side information that is collected will be used strictly for regulatory purposes.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association.[7] In particular, the Commission finds that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.[8]

The rule change requires both the buy- and sell-side of a transaction between two NASD members to report transaction information to the NASD. The NASD has represented that such dual trade reporting will improve the quality of the transaction data that the NASD collects for surveillance purposes. The Commission recognizes the value of crosschecking trade data submitted by one reporting dealer with information from the counterparty, and believes that the proposed amendment is an appropriate way to encourage complete and accurate transaction reporting without placing undue regulatory burdens on market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 66 FR 8822 (February 2, 2001).

[4] On January 23, 201, the Commission approved NASD Rules 6210 through 6260 relating to reporting and dissemination of transaction information on eligible fixed income securities, and granted accelerated approval to Amendment No. 4 to those Rules. Securities Exchange Act Release No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001). The NASD has represented that it will rename TRACE, as it does not include a comparison feature.

[5] The NASD proposed Rule 6231 in Amendment No. 2 to SR–NASD–99–65. *See* Securities Exchange Act Rel. No. 43616 (November 24, 2000); 65 FR 71174 (November 29, 2000).

[6] *See* note 9, *infra.* The MASD withdrew previously proposed Rule 6231 at the same time it amended the TRACE proposal to eliminate the proposed optional comparison feature of the TRACE facility. *See* Amendment No. 4 to SR–NASD–99–65, Securities Exchange Act Rel. No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001).

[7] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3(b)(6).