

only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92-463, I have determined that it is necessary to close a portion of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415-7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 3, 1999.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23933; 812-11606]

### Amway Mutual Fund Trust et al.; Notice of Application

August 3, 1999.

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

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** The requested order would permit applicants, Amway Mutual Fund Trust (the "Trust"), Amway Management Company ("Amway"), and Activa Asset Management LLC ("Activa" and together with Amway, the "Managers"), to enter into and materially amend subadvisory agreements without obtaining shareholder approval.

**FILING DATES:** The application was filed on February 24, 1999, and was amended on July 13, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 30, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609; Applicants, 2905 Lucerne SE, Grand Rapids, MI 45546.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 or George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company and operates as a series company. The only series of the Trust presently offered to the public is Amway Mutual Fund ("Fund"). The Trust has recently authorized four additional series ("New Funds") (together with the Fund, the "Funds").<sup>1</sup>

2. Anyway is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). Amway serves as investment adviser to the Fund under an investment management agreement between Amway and the Fund that was approved by the Trust's board of trustees ("Board"), including a majority of trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of the Fund (the "Management Agreement"). Activa, an investment adviser which will be registered under the Advisers Act, will serve as investment adviser to the Fund and the New Funds under an investment management agreement between Activa and the Funds that was approved by the Board, including a majority of the Independent Trustees, and will be approved by the initial shareholders of the New Funds before they are offered to the public and by shareholders of the Fund at a meeting scheduled to be held on August 30, 1999 (the "New Management Agreement").<sup>2</sup> The Managers are under

<sup>1</sup> Applicants also request that the relief apply to all registered open-end management investment companies or series thereof that are now, or in the future will be, advised by the Managers or any entity controlling, controlled by, or under common control with the Managers and which operate in substantially the same manner as the Trust ("Future Funds"). Applicants state that all existing investment companies that currently intend to rely on the requested order have been named as applicants, and any Future Funds that subsequently rely on the requested order will comply with the terms and conditions in the application.

<sup>2</sup> The New Management Agreement will not be effective until the effective date of Activa's registration under the Advisers Act. If the New Management Agreement is not approved by shareholders of the Fund, Amway will continue to serve as investment adviser to the Fund.

common control and have the same principal officers and employees.

3. The investment management responsibilities under the Management Agreement and the New Management Agreement (together the "Management Agreement") are essentially the same. Under the Management Agreement, the Managers have overall general supervisory responsibility for the investment management of the Funds and, subject to the supervision of the Board, the power to select subadvisers ("Subadvisers") to provide portfolio management services for all or a portion of a Fund. The Fund currently has, and each of the New Funds is expected to have, a single subadviser.

4. The Managers will select Subadvisers based on a continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a particular investment style. A Subadviser performs services pursuant to a written investment subadvisory agreement between the Subadviser and the Manager ("Subadvisory Agreement"). The Subadvisers are, and will be, registered under the Advisers Act. The Manager pays the Subadvisers out of the fees the Manager receives from the Trust.

5. Applicants request an order to permit the Managers to enter into, and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will be extend to a Subadviser that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Trust or the Managers, other than be reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser").

#### **Applicants' Legal Analysis**

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by majority of the investment company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants

believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that investors rely upon the Manager to select one or more Subadvisers for the Fund. Applicants contend that the role of the Subadviser, from the perspective of the investor, is comparable to that of the individual portfolio managers employed by other investment advisory firms. Applicants also contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Funds, and could prevent the prompt implementation of actions deemed advisable by the Manager and the Board. Applicants note that the Management Agreements will continue to be fully subject to section 15 of the Act and rule 18f-2 under the Act.

#### **Applicants' Conditions**

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

1. The Managers will provide management and administrative services to the Funds and, subject to the review and approval of the Board will: (i) Set the overall investment strategies of the Funds; (ii) evaluate and recommend Subadvisers; (iii) allocate, and when appropriate, reallocate, the assets of the Funds among Subadvisers in those cases where a Fund has more than one Subadviser; and (iv) monitor and evaluate the investment performance of the Subadvisers, including their compliance with the investment objectives, policies, and restrictions of the Funds.

2. Before any Fund may rely on the order requested in the application, the operation of the Fund in the manner described in this application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 4 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

3. Within 90 days of the hiring of any Subadviser, the Managers will furnish shareholders of the affected Fund with all information about such Subadviser that would be included in a proxy statement, including any change in such disclosure caused by the addition of the new Subadviser. The Managers will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under

the Securities Exchange Act of 1934, as amended ("1934 Act"). The information statement also will meet the requirements of Item 22 of Schedule 14A under the 1934 Act.

4. The Trust and any Future Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the "manager of managers" approach described in the application. The prospectus will prominently disclose that the Managers, subject to Board oversight, have the ultimate responsibility for the investment performance of the Fund due to their responsibility to oversee Subadvisers and recommend their hiring, termination, and replacement.

5. No director, trustee, or officer of the Trust, the Funds, or a Future Fund, or director or officer of the Managers, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a Subadviser except for (a) ownership of interests in the Manager or any entity that controls, is controlled by, or under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

6. Neither the Trust nor the Managers will enter into subadvisory Agreements on behalf of a Fund with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

8. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board that any such change of Subadvisers is in the best interest of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or Affiliated Subadviser derives an inappropriate advantage.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-20490 Filed 8-9-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23934; 812-11362]

### Elk Associates Funding Corporation and Ameritrans Capital Corporation; Notice of Application

August 3, 1999.

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

**ACTION:** Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicants, Elk Associates Funding Corporation ("Elk") and Ameritrans Capital Corporation ("Ameritrans"), request an order approving their respective Non-Employee Directors Stock Option Plans (the "Elk Plan" and the "Ameritrans Plan," collectively, the "Plans") and the grant of certain stock options under the Plans.

**FILING DATES:** The application was filed on October 19, 1998 and amended on July 29, 1999.

**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 August 30, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street, NW, Washington, DC 20549-0609. Applicants, c/o Perri Beth Irvings, Esquire, Stursberg & Veith, 405 Lexington Avenue, Suite 4949, New York, New York 10174-4902.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or George J. Zornada,

Branch Chief, at (202) 942-0528 (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 (tel. 202-942-8090).

### Applicants' Representations

1. Elk, a New York corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act<sup>1</sup> and is licensed as a small business investment company ("SBIC") under the Small Business Act of 1958, as amended. Ameritrans is a newly-created Delaware corporation that elected to become a BDC on July 29, 1999.

2. Applicants plan to enter into an Agreement and Plan of Share Exchange (the "Share Exchange Plan"). Under the Share Exchange Plan, Elk would become a wholly-owned subsidiary of Ameritrans, and the holders of all of the outstanding shares of Elk's common stock would receive one share of Ameritrans stock for each share of Elk stock owned (the "Share Exchange").<sup>2</sup> The Share Exchange is expected to take place as soon as practicable after issuance of the order by the Commission relating to the Share Exchange Plan. If the Share Exchange is consummated, Ameritrans will have the identical capital structure, management and board of directors ("Board") that Elk has currently. Elk, as a subsidiary of Ameritrans, would continue to operate as an SBIC and Ameritrans would engage in broader lending and investment operations consistent with its status as a BDC but not subject to SBIC restrictions. Ameritrans will not engage in any substantive business activities prior to the completion of the Share Exchange. Neither applicant has an external investment adviser within the meaning of section 2(a)(20) of the Act.

3. Applicants request an order under section 61(a)(3)(B) of the Act approving the Plans. Each Plan provides for the grant of options to acquire shares of the

<sup>1</sup>Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>2</sup>The Share Exchange Plan must be approved by the shareholders of Elk and by the Commission. Applicants have submitted a separate application to the Commission regarding the Share Exchange (File No. 812-11420).

relevant applicant's common stock to directors who are neither officers, employees nor interested persons (as defined by section 2(a)(19) of the Act) of applicants ("Non-Employee Directors").<sup>3</sup> Elk has a ten-member Board, six of whom are Non-Employee Directors.

4. The Plans are identical, except that the Ameritrans Plan will not become effective unless and until the Share Exchange is completed. When the Share Exchange occurs, the Ameritrans Plan would become the successor Plan to the Elk Plan and options granted under the Elk Plan would be deemed to have been issued under the Ameritrans Plan and would be exercisable for shares of Ameritrans stock. In the event the Share Exchange is not approved, the Elk Plan would remain in effect.

5. On August 21, 1998, the Board adopted the Elk Plan subject to approval by shareholders and the Commission. On September 28, 1998, Elk's shareholders approved the Elk Plan. The Board adopted the Ameritrans Plan on May 21, 1999 and the sole shareholder of Ameritrans approved the Ameritrans Plan on May 21, 1999. The Elk Plan will become effective on the date that it is approved by the Commission ("Approval Date").

6. The Elk Plan provides that on the later of the Approval Date or the first anniversary of the election or appointment of a Non-Employee Director to the Board ("Anniversary Date"), each Non-Employee Director then serving will receive an automatic grant of options to purchase a number of shares of Elk common stock ("Options") determined by dividing \$50,000 by the current market value of Elk's common stock on the Approval Date ("Initial Grants"). Following the Initial Grants, each new Non-Employee Director will automatically be granted a number of Options on his or her Anniversary Date to be determined by dividing \$50,000 by the current market value of shares of Elk common stock on the date of grant. Based on length of service, four of the six Elk Non-Employee Directors would be granted Options on the Approval Date and the other two Non-Employee Directors upon their Anniversary Date. All Options become exercisable 12 months after the date of the grant if the Non-Employee Director remains on the Board. A total of 75,000 shares of Elk's common stock is issuable to Non-Employee Directors under the Elk Plan.

<sup>3</sup>Each Elk Non-Employee Director currently receives a \$2,000 annual fee, \$750 for each Board meeting attended and reimbursement for meeting-related expenses.