

ability to invest in potentially advantageous securities.

5. Applicants state that expenses incurred by the BP have remained relatively high, and a large portion of the BP's expenses is fixed. Applicants represent that the lack of substantial assets in the BP results in high operating expenses that are borne by the Contract owners. The BP's 1994 actual expenses of 1.56% of average total net assets were higher than expenses of 1.03% of average total net assets for the AAP. Applicants contend that in comparing the expenses of the BP and AAP, the asset base of the BP and the increasing asset base of the AAP is a relevant consideration. Applicants assert that the increase in total assets of the AAP resulting from the substitution should result in a lessening of its overall expenses.

6. Applicants state that the AAP offers Contract owners investments compatible with the objectives of Contract owners investing in the BP. Applicants state that management of PaineWebber Life, in consultation with Mitchell Hutchins, studied the investment objectives, policies and restrictions of each of the Remaining Portfolios to form an opinion as to which of the Remaining Portfolios appeared most closely identified with the investment intent of a Contract owner invested in the BP. It was concluded that a Contract owner who had Contract values invested in the BP was primarily interested in a Portfolios with an objective of a stable return while preserving capital. The investment objective of the AAP is to seek a high total return with low volatility, and the recent revision of the investment policies of the BP led to the conclusion that the AAP most closely suits the investment intent of the Contract owner who now has Contract values invested in the BP.

#### Applicants' Conclusion

For the reasons discussed above, applicants submit that the proposed substitution of shares of the AAP for shares of the BP is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Rel. No IC-21562; File No. 812-9794]

#### Stagecoach Funds, Inc., et al.; Notice of Application

December 1, 1995.

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

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

**APPLICANTS:** Stagecoach Funds, Inc. ("Stagecoach Funds"), Stagecoach Inc., Stagecoach Trust, Overland Express Funds, Inc. ("Overland"), Life & Annuity Trust ("Annuity Trust"), Master Investment Portfolio ("MIP"), Master Investment Trust ("MIT"), Managed Series Investment Trust ("MSIT") (collectively, the "Companies"), Wells Fargo Bank, N.A. ("Wells Fargo"), and The Nikko Building Co., Ltd. ("Nikko Building").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

**SUMMARY OF APPLICATION:** Applicants request an exemption from section 15(f)(1)(A) to permit Wells Fargo and Nikko Building to sell their interests in Wells Fargo Nikko Investment Advisors ("WFNIA"), the sub-adviser to certain of the series offered by the Companies, to Barclays Bank PLC ("Barclays"). Without the requested exemption, the Companies would have to reconstitute their boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

**FILING DATES:** The application was filed on October 4, 1995, and amended on December 1, 1995.

**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 December 22, 1995, 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 writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Companies, 111 Center Street, Little Rock, Arkansas 72201; Wells Fargo, 420 Montgomery Street,

San Francisco, California 94105; Nikko Building, 3-1 Marunouchi, 3-Chrome, Chiyoda-Ku, Tokyo 100, Japan.

#### FOR FURTHER INFORMATION CONTACT:

Courtney S. Thornton, Senior Counsel, at (202) 942-0583, or Robert A. Robertson, 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.

#### Applicants' Representations

1. The Companies are open-end management investment companies registered under the Act, each of which currently offers several series.<sup>1</sup> Wells Fargo, a wholly-owned subsidiary of Wells Fargo & Co., currently serves as investment adviser to each series of the Companies (including the master portfolios in which feeder funds invest, but not the feeder funds themselves).

2. WFNIA is a California general partnership owned 50 percent by Wells Fargo Investment Advisors ("WF Advisors"), a wholly-owned subsidiary of Wells Fargo, and 50 percent by The Nikko Building U.S.A., Inc., a wholly-owned subsidiary of Nikko Building. WFNIA currently serves as sub-adviser to 15 of the 40 active series (the "Sub-Advised Series") offered by the Companies. As of June 30, 1995, the Sub-Advised Series had approximately \$3 billion in assets under management, which represented less than 27% of the aggregate assets under management in all active series of the Companies, and approximately 1.6% of the approximately \$183 billion in assets that WFNIA had under management.

3. On June 21, 1995, Wells Fargo, Nikko Building, and certain of their affiliates entered into a purchase and assumption agreement (the "Agreement") with Barclays to sell their interests in WFNIA for an aggregate price of approximately \$443 million, subject to various adjustments at the time of closing (the "Transaction"). As part of the purchase price, the Agreement also provides for Barclays to make monthly payments to Wells Fargo and its affiliated sellers of .15 percent of the aggregate value of the interests held by retail shareholders of Stagecoach Trust in the LifePath Master Portfolios

<sup>1</sup> Certain series of Stagecoach Inc., Stagecoach Trust and Overland are feeder funds in a master/feeder structure and currently invest substantially all of their assets in corresponding master portfolios of MIP, MIT or MSIT.

of MIP ("Installment Payments"), subject to certain continuity conditions.

4. Barclays has indicated an intention to reorganize WFNIA into WF Advisors (which also is being sold to Barclays), which then would be re-named BZW Global Investors. Alternatively, Barclays may maintain WFNIA as a separate subsidiary or combine it with the quantitative group of BZW Asset Management ("BZWAM"), the international management arm of Barclays. Upon completion of the Transaction, BZWAM and WFNIA (or its successor) will have, on a combined basis, approximately \$269 billion of assets under management, of which approximately \$3 billion, or approximately 1.1%, will represent assets of the Sub-Advised Series. Applicants state that WFNIA or its successor will continue to operate with WFNIA's current management, investment professionals, and resources essentially intact, and that WFNIA or its successor will continue to provide investment advisory services at least comparable to those currently provided by WFNIA to the Sub-Advised Series.

5. The Transaction will result in a "change in control" of WFNIA under the Act. As required by section 15(a)(4) of the Act, the current sub-advisory agreements will terminate upon their assignment. Applicants anticipate that, except as described below, WFNIA or its successor will, subject to the receipt of all necessary board and shareholder approvals and the complete satisfaction of other conditions to the closing of the Transaction, continue to act as sub-adviser to the Sub-Advised Series pursuant to new sub-advisory agreements (the "Proposed Sub-Advisory Agreements"). The Proposed Sub-Advisory Agreements will be identical in all material respects, including the respective fee levels, to the current sub-advisory agreements.

6. Applicants contemplate that WFNIA or its successor will, upon consummation of the Transaction, enter into advisory agreements (the "Proposed Advisory Agreements") with respect to nine of the fifteen Sub-Advised Series, pursuant to which WFNIA or its successor will become the primary investment adviser to such series. Wells Fargo has agreed to resign as primary adviser to these series primarily in recognition of an expectation that, following consummation of the Transaction, these series will be marketed largely through sales channels associated with Barclays. The Proposed Advisory Agreements will be identical in all material respects, including the fee levels, to the current advisory agreements with Wells Fargo. The

Proposed Advisory Agreements and the Proposed Sub-Advisory Agreements are referred to as the "Proposed Agreements." In accordance with the requirements of section 15(c) of the Act, each Company's board of directors, including the directors who are not interested persons of the Companies, considered and unanimously approved the Proposed Agreements at a special meeting held on October 10, 1995, after careful consideration of all material elements of the Transaction, including the Installment Payment agreement.<sup>2</sup> Proxy materials have been mailed to shareholders, and shareholder meetings will be convened in early December. The closing of the Transaction is currently scheduled for December 27, 1995, but is subject to a variety of conditions, including the receipt of various regulatory approvals.

#### Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit upon the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after such a sale, at least 75 percent of the board of an investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(v) defines an interested person of an investment adviser to include any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such broker or dealer. In addition, section 2(a)(19)(B)(iii) defines an interested person of an investment adviser to include anyone who has any interest in any security issued by the investment adviser or by a controlling person thereof.

2. The board of directors of each Company is comprised of the same seven individuals. Four of the seven directors of each Company may be considered interested persons of either the predecessor or successor adviser of the Company. Two of these directors are officers of a registered broker-dealer,

and another is a limited partner of a government securities dealer. As such, these three directors are affiliated persons of a broker or dealer (the "Broker-Affiliated Directors"), and interested persons of both the predecessor and successor advisers of the Companies.<sup>3</sup> Another director is a shareholder of Wells Fargo & Co., the parent of Wells Fargo, and therefore is an interested person of the predecessor adviser of the Companies. The three remaining directors are not interested persons of either the Companies or the predecessor or successor adviser. Because four of the seven directors of the Companies are interested persons of the predecessor and successor advisers, absent an exemption, applicants would be unable to comply with the requirements of section 15(f)(1)(A).

3. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the 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.

4. Applicants believe that the requested exemption is necessary or appropriate in the public interest. Applicants submit that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where a fund's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser or another party to the transaction, and the adviser has a material economic motivation to influence the interested directors. Applicants argue that no such circumstances exist with respect to the Broker-Affiliated Directors and the Transaction. Although the Broker-Affiliated Directors are technically interested persons of Wells Fargo and WFNIA or its successor (the "Advisers"), these directors and the broker-dealers with which they are affiliated are not affiliated persons of the Advisers within the meaning of section 2(a)(3) of the Act, nor are they

<sup>2</sup> Presentations relating to the Transaction were made to the board of directors at three separate board meetings. All of the non-interested directors attended and actively participated in all of these meetings, as did counsel for the non-interested directors and counsel to the Companies. Extensive written materials were provided to the directors in advance of the October 10 in-person meetings at which the new advisory arrangements were approved, and extensive deliberations occurred at these meetings.

<sup>3</sup> The exemption provided by rule 2a19-1 is not available with respect to the two directors who are officers of a broker-dealer because the broker-dealer serves as placement agent or distributor to the Companies (the "Distributor"). The exemption provided by rule 2a19-1 is not available with respect to the director who is a limited partner of a government securities dealer because the dealer engages in government securities transactions with the broker-dealer, as well as with Wells Fargo and Barclays, all of which fall within the definition of "complex" in the rule. Accordingly, this director does not meet the condition specified in the rule.

controlled by or under common control with the Advisers. Moreover, none of these directors is an officer, director, partner, co-partner, or employee of any Adviser, and the broker-dealers do not share any common directors, officers, or employees with the Advisers. Applicants also state that the Distributor is retained directly by the Companies. Accordingly, the Companies' retention of the Distributor is not dependent on the identity of, or transactions involving, the Adviser. The Distributor's compensation for its services is based on asset levels and/or the receipt of sales loads, and it therefore has a direct economic interest in having the Sub-Advised Series prosper and grow. In this respect, the Distributor's interests are consistent with the interests of the shareholders of the Sub-Advised Series.

5. Applicants believe that the requested exemption is consistent with the protection of investors. WFNIA or its successor will continue to offer services at least comparable to those currently performed by WFNIA, and will be supported by the resources of one of the largest international financial services corporations. WFNIA or its successor will continue operations with WFNIA's current management, investment professionals, and resources remaining essentially intact. The services that WFNIA or its successor will perform under the Proposed Sub-Advisory Agreements will be identical in all material respects to the services currently performed by WFNIA, and the fee levels for such services will remain the same. Finally, applicants state that each series will continue to be subject to all other provisions of the Act designed to protect the interests of investors, including section 15(f)(1)(B), and all four interested directors will continue to be treated as interested persons of the Companies and the Advisers for all purposes other than section 15(f)(1)(A).

6. Applicants also believe that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on a fund. Applicants argue that the SEC should exercise this flexibility in situations such as the proposed Transaction. Further, applicants state that section 15(f) was intended to ensure that, where there is a change in control of an investment adviser, the interests of investment company shareholders will

be protected and they will not be subject to any unfair burden as a result of such transaction. Applicants argue that the proposed Transaction is structured to protect the interests of the shareholders of each Sub-Advised Series and that shareholders will benefit from the requested exemption.

#### Applicants' Condition

Applicants agree that any order of the SEC granting the requested relief will be subject to the following condition:

If within three years of the completion of the Transaction, it becomes necessary to replace any director, that director will be replaced by a director who is not an interested person of Wells Fargo Bank, WFNIA, or its successor within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of Wells Fargo Bank, WFNIA, or its successor.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 95-29916 Filed 12-4-95; 3:57 pm]

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[Release No. 34-36542; International Series No. 896; File No. S7-8-90]

#### Order Approving Proposed Amendment to the Options Price Reporting Authority's National Market System Plan for the Purpose of Updating the Current Fee Structure and Eliminating the Use of Separate News Service Agreements

November 30, 1995.

On April 25, 1995, the Options Price Reporting Authority ("OPRA")<sup>1</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Rule 11Aa3-2<sup>2</sup> under the Securities Exchange Act of 1934 ("Exchange Act")<sup>3</sup> a proposed amendment to its National Market System Plan ("OPRA Plan") for the purpose of updating the current fee structure and eliminating the use of separate news service agreements. Notice of the proposed amendment was

<sup>1</sup> OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection dissemination of last sale and quotation information options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Stock Exchange ("PSE"); and the Philadelphia Stock Exchange ("PHLX").

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> 15 S.C. 78K-1.

provided by issuance of a Commission release<sup>4</sup> and by publication in the Federal Register.<sup>5</sup> The Commission received 220 comment letters. For the reasons discussed below, the Commission is approving the proposed amendment.

#### I. Description

OPRA proposes to establish a new redistribution fee of \$1800 per month that will be payable by every vendor that redistributes options market information to any person, whether on a current or delayed basis. The redistribution fee, however, will not apply to a vendor whose redistribution of options information is limited solely to "historical" information.<sup>6</sup> With the introduction of the redistribution fee, the amendment eliminates the vendor and news service pass-through fee, previously \$2800.<sup>7</sup> Further, OPRA proposes to reduce the direct access charge from \$2800 to \$900 per month.<sup>8</sup>

In addition to restructuring its fees, OPRA proposes to eliminate the separate news service agreement. Instead, OPRA will categorize news services as vendor and will seek to have news services sign vendor agreements. OPRA also is proposing to make conforming changes to the OPRA Plan.

#### II. Summary of Comments

As noted above, the Commission received 220 comments letters regarding the proposal. Most comments were submitted by users of delayed data, primarily small investors who expressed concern about the impact the redistribution fee will have on their own fees. While some commenters did not object to existing and proposed OPRA fee for real-time data, virtually all commenters opposed the proposed redistribution fee as it applies to delayed data. The commenters claimed that the proposal will set a bad precedent that will lead other markets also to charge for delayed data.

Many commenters expressed a belief that all market information should be

<sup>4</sup> Securities Exchange Act Release No. 35804 (June 5, 1995).

<sup>5</sup> 60 FR 30905 (June 12, 1995).

<sup>6</sup> Under the proposal, information becomes "historical" upon the opening of trading in the next succeeding trading session of that same market. For example, reports of transactions completed in a trading session on Wednesday become historical reports from and after the opening of trading on the following Thursday.

<sup>7</sup> This \$2800 monthly fee currently is payable by every vendor and news service that receives options information from another vendor on a current basis.

<sup>8</sup> Currently, the direct access charge is payable by every vendor, subscriber or news service that has been authorized by OPRA to receive options information via the consolidated high-speed service from OPRA's Processor.