

of the Act and rules 45 and 54 under the Act.

By prior Commission orders dated January 29, 1992, February 28, 1992, July 14, 1992, November 5, 1993, November 28, 1995, April 18, 1996, December 23, 1997, May 19, 1999 and October 8, 1999 (HCAR Nos. 25462, 25481, 25581, 25919, 26418, 26506, 26804, 27030 and 27084) ("Money Pool Orders"), among other things, Allegheny and its subsidiary companies were authorized to establish and participate in a system money pool ("Money Pool") to be administered by Service. By order dated November 12, 1999 (HCAR No. 27101) ("Financing Order"), among other things, the Commission authorized, through July 31, 2005, Supply to effect short-term borrowings in aggregate outstanding amounts of \$300 million, consisting of the issuance of up to \$100 million of notes ("Notes") to Allegheny and up to \$200 million of commercial paper ("Paper") to dealers and Allegheny to enter into credit and counterparty support agreements ("Support Agreements") for the benefit of Supply in amounts of up to \$150 million.

The Applicants state that competitive pressures in the industry have required that the system expand its generating capacity to a level that will allow it to serve a larger customer base. In order to meet the additional capital requirements associated with the expansion, the Applicants request that the Commission modify the authority granted in the Money Pool Orders to include Supply in the Money Pool. Additionally, it is requested that the authority granted in the Financing Order be modified to allow for additional financing authority.

In particular, Allegheny proposes to: (1) issue and sell up to \$135 million of long-term unsecured notes to banks or other institutions,¹ and (2) enter into Support Agreements for the benefit of Supply in amounts increased from \$150 million to \$250 million. Supply proposes to: (1) issue and sell up to \$400 million of secured and unsecured long-term debt,² and (2) issue and sell Notes and Paper and borrow from the Money Pool,³ each in aggregate

outstanding amounts of up to \$300 million, provided that its aggregate outstanding short-term debt does not exceed \$300 million.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24490; 812-12050]

American General Series Portfolio Company 2, et al., Notice of Application

June 7, 2000.

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

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain series of the North American Funds ("NAF") to acquire all of the assets and liabilities of certain series of the American General Series Portfolio Company 2 ("AGSPC2"). Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

Applicants: AGSPC2, NAF, The Variable Annuity Life Insurance Company ("VALIC"), and American General Corporation ("American General").

Filing Dates: The application was filed on March 24, 2000. Applicants agree 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 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 June 29, 2000, 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: AGSPC2, VALIC, and American General 2929 Allen Parkway, Houston, Texas 77019; NAF, 286 Congress Street, Boston, Massachusetts, 02210.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942-7120, or Christine Y. Greenlees, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Reorganization).

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 (telephone (202) 942-8090).

Applicants' Representations

1. AGSPC2, a Delaware business trust, is registered under the Act as an open-end management investment company and is comprised of twenty-four series, twenty-two of which are involved in the proposed transactions (the "Acquired Series"). NAF, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of twenty-five series, twenty of which are involved in the proposed transactions (The "Acquiring Series"). Ten of the Acquiring Series are newly organized for purposes of the proposed transactions.¹ The Acquiring Series and the Acquired Series are collectively referred to as the "Series."

2. VALIC serves as investment adviser to the Acquired Series and is registered under the Investment Advisers Act of 1940 ("Advisers Act"). VALIC has delegated responsibility for the day-to-day management of five of the Acquired Series to American General Investment Management, L.P. ("AGIM"), an investment adviser registered under the Advisers Act. American General Asset Management Corp. ("AGAM") is the investment adviser for NAF and is registered under the Advisers Act. VALIC, AGIM, and AGAM are wholly-owned subsidiaries of American General.

3. Currently, VALIC and American General's employee pension plan, the American General Retirement Plan (the "Affiliated Plan"), each hold of record in excess of 5% (in some cases, more

¹ See *Southern Co.*, HCAR No. 27134 (February 9, 2000) (authorizing electric utility holding company to issue unsecured debt and preferred securities).

² The record notes that the interest rates, fees and expenses associated with the long-term debt issued by Allegheny and Supply will be comparable to those obtainable by similar utilities issuing comparable securities containing the same or similar terms and maturities.

³ Supply proposes to lend to and borrow up to \$300 million from the Money Pool on the same terms and under the same conditions that are available to current Money Pool members.

Allegheny Energy, Inc., Holding Co. Act Release No. 25481 (February 28, 1992).

¹ A post-effective amendment to the registration statement for the ten newly created Acquiring Series was filed with the Commission on March 17, 2000, and became effective on May 31, 2000.

than 25%) of the outstanding voting securities of certain of the Acquired Series. VALIC holds its shares for its own account and, thus, may be deemed to have an economic interest in the shares. The Affiliated Plan holds its shares in a fiduciary capacity and does not have an economic interest in these shares.

4. On February 27, 2000, and March 2, 2000, respectively, the board of trustees of each of NAF (the "NAF Board") and AGSPC2 (the "AGSPC Board," and together with the NAF Board, the "Boards"), including in each case a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), approved plans of reorganization between the Acquiring Funds and the Acquired Funds (the "Plans," and the transactions, the "Fund Reorganizations").² The Fund Reorganizations are expected to occur on June 30, 2000 (the "Closing Date"). Under the Plans, the Acquiring Series will acquire substantially all of the assets, subject to the liabilities, of the Acquired Series in exchange for shares of designated classes of the corresponding Acquiring Series having an aggregate net asset value ("NAV") equal to the aggregate NAV of the corresponding Acquired Series' shares, determined as of 4 p.m. Eastern Time on the Closing Date. The aggregate NAV of the Series' shares will be computed in the manner set forth in the Acquiring Series' prospectuses and statements of additional information. Upon

² The Acquired Series and Acquiring Series will combine as follows: (1) AGSPC2 Large Cap Growth Fund into NAF Large Cap Growth Fund; (2) AGSPC2 International Growth Fund and AGSPC2 International Value Fund into NAF International Equity Fund; (3) AGSPC2 Large Cap Value Fund into NAF Growth & Income Fund; (4) AGSPC2 Balanced Fund into NAF Balanced Fund; (5) ASPC2 Mid Cap Growth Fund into NAF Mid Cap Growth Fund; (6) AGSPC2 Small Cap Growth Fund into NAF Small Cap Growth Fund; (7) AGSPC2 Strategic Bond Fund into NAF Strategic Income Fund; (8) AGSPC2 Municipal Bond Fund into NAF Municipal Bond Fund; (9) AGSPC2 Money Market Fund into NAF Money Market Fund; (10) AGSPC2 Core Bond Fund and AGSPC2 Domestic Bond Fund into NAF Core Bond Fund; (11) AGSPC2 Mid Cap Value Fund into NAF Mid Cap Value Fund; (12) AGSPC2 Stock Index Fund into NAF Stock Index Fund; (13) AGSPC2 Small Cap Index Fund into NAF Small Cap Index Fund; (14) AGSPC2 Socially Responsible Fund into NAF Socially Responsible Fund; (15) AGSPC2 High Yield Bond Fund into NAF High Yield Bond Fund; (16) AGSPC2 Growth Lifestyle Fund into NAF Aggressive Growth Lifestyle Fund; (17) AGSPC2 Moderate Growth Lifestyle Fund into NAF Moderate Growth Lifestyle Fund; (18) AGSPC2 Conservative Growth Lifestyle Fund into NAF Conservative Growth Lifestyle Fund; (19) AGSPC2 Municipal Money Market Fund into NAF Municipal Money Market Fund; and (20) AGSPC2 Science & Technology Fund into NAF Science & Technology Fund.

consummation of the proposed transactions, each Acquired Series will distribute its full fractional shares of the Acquiring Series *pro rata* to its shareholders of record, determined as of the Closing Date, and the Acquired Series will be liquidated.

5. Applicants state that the investment objective of each Acquired Series and its corresponding Acquiring Series are similar. Applicants also state that the investment restrictions and limitations of each Acquired Series and its corresponding Acquiring Series generally are similar, but in some cases involve differences that reflect the differences in the general investment strategies used by the Series.

6. The Series offer four classes of shares: Class A, Class B, Institutional Class I, and Institutional Class II. The various expenses of each class of shares of the Acquired and Acquiring Series are as follows:

a. *Class A*: Class A shares of both the Acquired Series and the Acquiring Series have a front-end sales load of up to 5.75% (4.75% for the fixed income Acquired Series), but no contingent deferred sales charge ("CDSC"). The Acquired Series and the Acquiring Series generally are subject to a 12b-1 fee of up to 0.25% and 0.35%, respectively (0.15% for the NAF Municipal Bond Fund). Class A shares of the AGSPC2 Growth Lifestyle Fund, the AGSPC2 Moderate Growth Lifestyle Fund, and the AGSPC2 Conservative Growth Lifestyle Fund (collectively, the "American General Lifestyle Funds") are not subject to a rule 12b-1 fee, but Class A shares of the corresponding Acquiring Series will be subject to a rule 12b-1 fee of up to 0.35%. Class A shares of the NAF Money Market Fund are not subject to a front-end sales charge or a rule 12b-1 fee.

b. *Class B*: Class B shares of each Acquired and Acquiring Series have no front-end sales load. Class B shares of the Acquired Series have a maximum CDSC of 5%, which decreases by one percentage point each year until the fifth year, when the fee is 1% and zero thereafter. Class B shares of the Acquiring Series have a maximum CDSC of 5% in the first two years, which decreases by one percentage point each year until the sixth year, when the fee is 1% and zero thereafter. For purposes of calculating the CDSC on Class B shares, shareholders of the Acquired Series will be deemed to have held Class B shares of the Acquiring Series since the date the shareholders initially purchased the shares of the Acquired Series. Class B shares of each Acquired and Acquiring Series have a rule 12b-1 fee of up to 1%, except for

Class B shares of the American General Lifestyle Funds and the NAF Money Market Fund, which do not have a rule 12b-1 fee. Class B shares of the Acquiring Series and the Acquired Series convert to Class A shares eight and six years, respectively, after purchase. After the Fund Reorganizations, Class B shares will convert to Class A shares six years after purchase.

c. *Institutional Class I*: Institutional Class I shares of the Acquired Series have no front-end sales load, CDSC, or 12b-1 fee, but are subject to a 0.25% administrative services fee. Institutional Class I shares of the corresponding Acquired Series, will have the same characteristics as the corresponding Acquiring Series, except for the corresponding Acquiring Series of the American General Lifestyle Funds, which will not be subject to the 0.25% administrative services fee. All of the Acquired Series have Institutional Class I Shares, except for AGSPC2 Stock Index Fund, AGSPC2 Small Cap Index Fund, AGSPC2 Municipal Money Market Fund, and AGSPC2 Municipal Bond Fund, Institutional Class I Shares will be offered by all of the Acquiring Series, except for NAF Municipal Money Market Fund and NAF Municipal Bond Fund.

d. *Institutional Class II*: Currently, on AGSPC2 High Yield Bond Fund and AGSPC2 Core Bond Fund have Institutional Class II shareholders. The Institutional Class II shares of these Acquired Series have no front-end sales load, CDSC, or rule 12b-1 fee. The Institutional Class II shares of the corresponding Acquiring Series will have the same characteristics as the two corresponding Acquired Series. Shareholders of the Acquired Series will not incur any sales charges in connection with the Fund Reorganizations. American General will pay the expenses of the Fund Reorganizations.

7. The Boards of AGSPC2 and NAF, including in each case a majority of the Independent Trustees, found that participation in the Fund Reorganizations is in the best interests of the shareholders of each of the Acquired and Acquiring Series and that the interests of existing shareholders will not be diluted as a result of the Fund Reorganizations. In approving the Fund Reorganizations, the Boards of AGSPC2 and NAF considered, among other things: (a) The terms and conditions of each Fund Reorganization; (b) the expense ratios of the Acquired Series and the Acquiring Series before the Fund Reorganization and the estimated expense ratios of the

Acquiring Series after the Fund Reorganizations; (c) the fact that the costs estimated to be incurred by the Series as a result of the Fund Reorganizations will not be borne by the Series, but by American General; and (d) the tax-free nature of the Fund Reorganizations.

8. The Plans are subject to a number of conditions precedent, including that: (a) the Plans will have been approved by the Boards of each of the Acquired Series and the Acquiring Series and by the shareholders of each of the Acquired Series; (b) each Acquired Series will solicit proxies from its shareholders pursuant to definitive proxy materials filed with the Commission; (c) the applicants will have received an opinion of counsel concerning the federal income tax aspects of the Fund Reorganizations; and (d) applicants will have received from the Commission exemptive relief from section 17(a) of the Act for the Fund Reorganizations. Each Plan may be terminated by mutual agreement of the Boards at any time prior to the Closing Date. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

9. Definitive proxy materials have been filed with the Commission and were mailed to shareholders of each Acquired Series on or about June 1, 2000. A special meeting of the shareholders of each Acquired Series is scheduled to be held on or about June 22, 2000.

Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Series may be deemed affiliated persons and, thus, the Fund Reorganizations may be prohibited by section 17(a).

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a)

mergers, consolidations, or purchasers or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 in connection with the Fund Reorganizations because certain Series may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by VALIC and the Affiliated Plan of more than 5% (in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series, each Acquired Series may be deemed an affiliated person of an affiliated person of the corresponding Acquiring Series.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Fund Reorganizations. Applicants submit that the Fund Reorganizations satisfy the standards of section 17(b) of the Act. Applicants submit that the Fund Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Boards of AGSPC2 and NAF, including in each case a majority of their Independent Trustees, found that participating in the Fund Reorganizations is in the best interests of the shareholders of each of the Series, and that the interests of the shareholders will not be diluted as a result of the Fund Reorganizations. Applicants also note that the exchange of the Acquired Series' assets for shares of the Acquiring Series will be based on the Series' relative NAVs.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42872; File No. SR-Amex-00-18]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change to Raise Equity Options Transaction Fees for Non-Member Broker-Dealers

May 31, 2000.

I. Introduction

On April 7, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 was published for comment in the *Federal Register* on May 10, 2000.³ The Commission received no comments on the proposal. This order grants accelerated approval of the proposal.

II. Description of the Proposal

The Amex proposes to increase equity options transaction fees for non-member broker-dealer orders. The Amex currently imposes a transaction charge on options trades executed on the Exchange. The charges vary depending on whether the transaction involves an equity or index option and whether the transaction is executed for a specialist or market maker account, a member firm's proprietary account, a non-member broker-dealer, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depends upon the type of account for which the trade is executed. In addition, all three types of charges—transactions, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.⁴

Recently, the Amex eliminated all options transaction, clearance, and floor brokerage fees for customer equity options orders.⁵ To offset the elimination of these fees for customer equity options orders, the Exchange raised the equity options transaction fee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 42752 (May 3, 2000), 65 FR 30154.

⁴ The current caps are set at 2,000 contracts for customer trades and 3,000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

⁵ See Securities Exchange Act Release No. 42675, (April 13, 2000), 65 FR 21223 (April 20, 2000).