

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: November 29, 1999.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC-24178; File No. 812-11686]

### American General Annuity Insurance Company, et al.; Notice of Application

November 29, 1999.

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

**ACTION:** Notice of application for an order under Sections 26(b) and 17(b) of the Investment Company Act of 1940 (the "1940 Act" or "Act").

**SUMMARY OF APPLICATION:** Applicants seek an order under Section 26(b) of the 1940 Act approving the proposed substitution of shares of certain series of American General Series Portfolio Company, OCC Accumulation Trust ("OCCAT"), and Van Kampen Life Investment Trust ("LIT") for shares of comparable series of A.G. Series Trust held by A.G. Separate Account A to fund certain individual fixed and variable deferred annuity contracts issued by American General Annuity Insurance Company. Applicants also seek an order under Section 17(b) of the 1940 Act granting exemptions from Section 17(a) to permit certain in-kind redemption and purchase transactions in connection with the substitutions.

**APPLICANTS:** American General Annuity Insurance Company ("AGAIC"), A.G. Separate Account A (the "Account"), A.G. Series Trust ("the "Trust") and American General Series Portfolio Company ("AGSPC").

**FILING DATE:** The application was filed on July 7, 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 on the application by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on December 20, 1999, and must be accompanied by proof of service on the 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 Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Huey P. Falgout, Jr., 2929 Allen Parkway, Houston, Texas 77019.

**FOR FURTHER INFORMATION CONTACT:** Joyce Merrick Pickholz, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

#### Applicants' Representations

1. AGAIC is a stock life insurance company incorporated in Texas. AGAIC is wholly owned by Western National Corporation which is a wholly owned subsidiary of AGC Life Insurance Company, a subsidiary of American General Corporation.

2. The Account was established by AGAIC under Texas law. The Account is registered under the 1940 Act as a unit investment trust and serves as funding vehicles for certain individual flexible premium fixed and variable deferred annuity contracts issued by AGAIC (the "Contracts"). The Account is currently divided into fifteen sub-accounts.

3. Under the Contracts, a Contract owner may select between seven of the

Account's sub-accounts each of which invests in a corresponding series of the Trust and two fixed account options. An owner of any Contract may make transfers between these options subject to the following limits: (a) the minimum transfer is \$250 or the value of the account, if less (or if the value of the account after the transfer would be less than \$500, the entire balance is transferred); (b) only one transfer per day is permitted between the variable options; (c) only one transfer every six months is permitted from the variable account options to the non dollar cost averaging fixed account option; and (d) transfer from the dollar cost averaging fixed account option to the variable account options are limited to 20% of the dollar cost averaging account value. No fees of other charges are currently imposed on transfers, though AGAIC reserves the right to impose a fee of the lesser of \$25 or 2% of the amount transferred for each transfer. Any transfer limits and charges will be suspended in connection with the substitution.

4. The Trust, an unincorporated business trust established under Massachusetts law, is registered under the 1940 Act as an open-end management investment company. Shares of the Trust's seven portfolios are sold exclusively to the Account to fund benefits under the Contracts. A.G. Advisory Services, Inc. ("AGAIS"), an indirect subsidiary of Western National Corporation, is the investment advisor to the Trust.

5. Shares of AGSPC are sold exclusively to separate accounts to fund benefits under variable annuity contracts and variable life insurance policies sponsored by The Variable Annuity Life Insurance Company ("VALIC"), its affiliates or employer thrift plans maintained by VALIC or American General Corporation. VALIC is an indirect wholly owned subsidiary of American General Corporation. AGSPC is a Maryland corporation registered under the 1940 Act as an open-end management investment company. VALIC serves as AGSPC's investment advisor. Bankers Trust Company serves as sub-advisor to the AGSPC's Stock Index Fund.

6. OCCAT is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. Shares of OCCAT are sold only to variable accounts of life insurance companies as an investment vehicle for variable annuity and variable life insurance contracts and to qualified pension and retirement plans. OpCap Advisors serves as investment advisor for OCCAT.

7. Shares of LIT, a Delaware business trust registered under the 1940 Act as an open-end management investment company, are sold only to variable accounts of life insurance companies as an investment vehicle for their variable annuity and variable life insurance contracts. Van Kampen Management Inc. serves as LIT's investment advisor.

8. AGAIC proposes to substitute:

(a) shares of AGSPC's Government Securities Fund for shares of the Trust's American General U.S. Government Securities Portfolio;

(b) shares of AGSPC's Growth & Income Fund for shares of the Trust's Credit Suisse Growth and Income Portfolio;

(c) shares of AGSPC's International Equities Fund for shares of the Trust's Credit Suisse International Equities Portfolio;

(d) shares of OCCAT's Managed Portfolio for shares of the Trust's Elite Value Portfolio;

(e) shares of AGSPC's Stock Index Fund for shares of the Trust's State Street Global Advisors Growth Equity Portfolio;

(f) shares of AGSPC's Money Market Fund for shares of the Trust's State Street Global Advisors Money Market Portfolio; and

(g) shares of LIT's Emerging Growth Portfolio for shares of the Trust's Van Kampen Emerging Growth Portfolio.

9. American General U.S. Government Securities Portfolio of the Trust seeks a high level of current income by investing primarily in fixed income securities and mortgage-backed securities issued or guaranteed by the U.S. Government and its agencies or instrumentalities and collateralized mortgage obligations. AGSPC's Government Securities Fund seeks high current income and protection of capital through investments in intermediate and long-term U.S. Government debt securities.

10. The Trust's Credit Suisse Growth and Income Portfolio seeks long-term growth of capital, current income and growth of income, consistent with reasonable investment risk through investments primarily in equity securities, fixed income securities and cash instruments. AGSPC's Growth and Income Fund seeks to provide long-term growth of capital and, secondarily, income through investment in common stocks and equity-related securities.

11. The Trust's Credit Suisse International Equity Portfolio seeks long-term capital appreciation by investing in equity and equity related securities of companies located in at least five foreign countries, excluding the United States. AGSPC's

International Equities Fund has as its investment objective the long-term growth of capital through investments in a diversified portfolio of equity and equity-related securities of foreign issuers that, as a group, are expected to provide investment results closely corresponding to the performance of the EAFE Index.

12. The investment objective of both the Trust's Elite Value Portfolio and OCCAT's Managed Portfolio is growth of capital over time through investment in a portfolio consisting of common stocks, bonds and cash equivalents.

13. The Trust's State Street Global Advisors Growth Equity Portfolio has as its investment objective to provide total returns that exceed, over time, the S&P Index through investment in equity securities. AGSPC's Stock Index Fund seeks long-term capital growth through investment in common stocks that as a group, are expected to provide results closely corresponding to the performance of the S&P Index.

14. The Trust's State Street Global Advisors Money Market Portfolio seeks maximum current income, to the extent consistent with the preservation of capital and liquidity and the maintenance of a stable \$1.00 per share net asset value, by investing in dollar denominated securities with remaining maturities of one year or less. AGSPC's Money Market Portfolio seeks liquidity, protection of capital and current income through investments in short-term money market instruments.

15. The Trust's Van Kampen Emerging Growth Portfolio's investment objective is capital appreciation and any ordinary income from portfolio securities is entirely incidental. The investment objective of LIT's Emerging Growth Portfolio is capital appreciation by investing in a portfolio of securities consisting principally of common stocks of small and medium sized companies considered by the portfolio's investment advisor to be emerging growth companies.

16. Applicants submit that the substitutions are expected to result in enhanced administrative efficiency. Applicants state that the portfolios of the Trust have remained relatively small and their expense ratios have, therefore, remained relatively high because the costs of administering the portfolios is spread over a relatively small asset base. To maintain expense ratios at competitive levels, AGAIC has subsidized the portfolios' expenses and until May 1, 1998, the portfolios' investment advisor, AGAIC, was also waiving a portion of its investment advisory fee. Since the Trust's inception, AGAIC has subsidized other

expenses of the Trust, limiting such expense to .12%. Without those fee waivers and subsidies, total portfolio expenses would have ranged from 1.41% for the Elite Portfolio to 3.78% for the Credit Suisse International Equity Portfolio. AGAIC is unwilling to continue fee reimbursements indefinitely because of the cost to AGAIC. For 1998, fee waivers and reimbursements amounted to approximately \$876,000. The AGSPC funds, OCCAT Managed Portfolio, and LIT Emerging Growth Portfolio are much larger and, therefore, enjoy economies of scale that the Trust's portfolios do not.

17. Applicants state that for all substitutions, the gross total expense ratios for the Trust's portfolios are substantially higher than those of the much larger AGSPC funds, OCCAT Managed Portfolio, and LIT Emerging Growth Portfolio that would replace them. On a net basis (after waivers or reimbursements), the proposed substitutions of AGSPC's Government Securities Fund for the Trust's American General U.S. Government Securities Portfolio, AGSPC's Money Market Fund for the Trust's State Street Global Advisors Money Market Portfolio, OCCAT's Managed Portfolio for the Trust's Elite Value Portfolio, and LIT's Emerging Growth Portfolio for the Trust's Van Kampen Emerging Growth Portfolio results in increases in total expense ratios of .01%, .05%, .13% and .05%, respectively. Applicants state that those differences are, however, at least partly attributable to the waiver by AGAIC of its investment advisory fees for part of 1998. Applicants state that since those waivers have already been discontinued, it is likely that the expense ratios of the Trust's portfolios would be higher than their proposed replacements.

18. Applicants expect that the substitution of AGSPC's Stock Index Fund for the Trust's State Street Global Advisors Growth Equity Portfolio, AGSPC's Money Market Fund for the Trust's State Street Global Advisors Money Market Portfolio, and OCCAT's Managed Portfolio for the Trust's Elite Value Portfolio will result in increases in advisory fees of .25%, .05% and .13%, respectively, but the gross total expense ratios are expected to decline .35%, 1.9%, and .59%, respectively.

19. The chart below shows for each proposed substitution the total net assets, management fee (with and without waiver in the case of the Trust's portfolios), and total expense ratios (with and without reimbursement in the case of the Trust's portfolios) for the year ended December 31, 1998.

Substituting funds	Eliminated fund assets (000's)	Eliminated fund mgmt fee w/o reimburs	Eliminated fund mgmt fee w/ reimburs	Eliminated fund total exp. w/o reimb.	Eliminated fund total exp. w/ reimb.	Replacement fund assets (000's)	Replacement fund mgmt fee	Replacement fund total exp.
AGSPC Growth & Income for Credit Suisse Growth & Income .....	\$16,713	0.75	0.69	2.01	0.81	\$285,108	0.75	0.80
AGSPC International Equities for Credit Suisse International Equity .....	5,996	0.90	0.82	3.78	0.94	148,785	0.35	0.40
AGSPC Gov't Securities for American General U.S. Gov't Securities Portfolios .....	8,679	0.475	0.41	2.46	0.53	113,555	0.50	0.54
AGSPC Stock Index for State Street Global Advisors Growth Equity .....	15,500	0.61	0.54	1.96	0.66	4,100,923	0.27	0.31
AGSPC Money Market for State Street Global Advisors Money Market .....	9,253	0.45	0.37	2.44	0.49	273,628	0.50	0.54
LIT Emerging Growth with waivers (without) for Van Kampen Emerging Growth .....	11,674	0.75	0.68	2.64	0.80	33,400	0.32 (0.75)	0.85 (1.23)
OCCAT Managed Portfolio for Elite Value .....	20,620	0.65	0.59	1.41	0.71	777,087	<sup>1</sup> 0.78	0.84

<sup>1</sup> Effective fee rate based on the following schedule: 0.80% on the first \$400 Million, 0.75% on the next \$400 Million, and 0.70% on the excess over \$800 Million.

20. Below is a chart showing the total returns for each of the funds involved in the proposed substitutions for the past one, three, and five fiscal years (if available) or since inception (if less than five years), as the case may be. Applicants state the performance of the proposed replacement AGSPC funds, OCCAT Management Portfolio, and LIT Emerging Growth Portfolio for comparable periods exceeds the performance of the substituted Trust

portfolios in all but one case. For the proposed substitution of AGSPC's Money Market Fund for the Trust's State Street Global Advisors Money Market Portfolio, the replaced portfolio's performance for the one- and three-year period exceeds that of the AGSPC fund. However, Applicants submit that performance was accomplished with substantially subsidized total expenses. Without those subsidies the Trust's portfolios would likely have

significantly underperformed the AGSPC fund in the past and would likely continue to do so in the future owing to its substantially higher expenses. Applicants state that the State Street Global Advisors Money Market Portfolio out-performance of .08% to .20% would be eliminated by the 1.90% increase reflected in the gross total expense ratio.

Substituting funds	Trust portfolios performance (percent)		Since Inception	Replacement funds performance (percent)		
	1 year	3 Year		1 Year	3 Year	5 Year
AGSPC Growth & Income for Credit Suisse Growth and Income .....	14.16	16.71	17.89	14.56	20.49	N/A
AGSPC International Equities for Credit Suisse International Equity .....	(0.86)	6.40	7.27	17.76	9.04	9.17
AGSPC Gov't Securities for American General U.S. Gov't Securities .....	7.49	N/A	6.79	8.96	5.54	6.29
AGSPC Stock Index for State Street Global Advisors Growth Equity .....	21.60	24.79	24.40	27.14	26.74	22.51

Substituting funds	Trust portfolios performance (percent)		Since Inception	Replacement funds performance (percent)		
	1 year	3 Year		1 Year	3 Year	5 Year
AGSPC Money Market for State Street Global Advisors Money Market .....	5.23	5.31	5.30	5.15	5.11	4.93
LIT Emerging Growth for Van Kampen Emerging Growth .....	36.56		25.11	37.56	24.56	<sup>2</sup> 26.31
OCCAT Managed Portfolio for Elite Value .....	6.72		17.86	7.12	17.15	<sup>3</sup> 19.15

<sup>2</sup> Since Inception 7/3/95.

<sup>3</sup> On September 16, 1994, an investment company then called Quest for Value Accumulation Trust (the "Old Trust") was effectively divided into two investment funds, the Old Trust and OCCAT, at which time the Fund commenced operations. The total net assets for each of the Equity, Small Cap and Managed Portfolios immediately after the transaction were \$86,789,755, \$139,812,573, and \$682,601,380, respectively, with respect to the Old Trust and for each of the Equity, Small Cap and Managed Portfolios, \$3,764,598, \$8,129,274, and \$51,345,102, respectively, with respect to OCCAT. For the period prior to September 16, 1994, the performance figures above for each of the Equity, Small Cap and Managed Portfolios reflect the performance of the corresponding Portfolios of the Old Trust. The Old Trust commenced operations on August 1, 1998.

21. By supplements to the prospectus for the Contracts and the Account, AGAIC will notify all owners of the Contracts of its intention to take the necessary actions to substitute shares of the funds. The supplements will advise Contract owners that from the date of the supplement until the date of the proposed substitutions, owners are permitted to make transfers among the sub-accounts as usual, except that the limit on frequency of transfers from the variable account options to the non dollar cost averaging fixed account option will be waived. The supplements will also inform Contract owners that AGAIC will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

22. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value, cash value or death benefit or in the dollar value of his or her investment in the Separate Account. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or AGAIC's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by AGAIC. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract Fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year.

23. In addition to the prospectus supplements distributed to Contract owners, within five days after the substitutions, contract owners will be sent a written notice informing them that the substitutions were carried out and that they may make open transfer of all contract value or cash value under a Contract invested in any one of the sub-accounts on the date of the notice to another sub-account available under their Contract without regard to the usual limit on the frequency of transfers from the variable account options to the non dollar cost averaging fixed account option. The notice will also reiterate that AGAIC will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. Notices delivered in certain states may also explain that, under the insurance regulations in those states, affected contract owners may exchange their Contracts for other annuity contracts issued by AGAIC (or one of its affiliates) during the 60 days following the proposed substitutions. The notices will be accompanied by current prospectuses for the portfolios/funds involved.

#### Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted

from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. AGAIC and the Account (the "Section 26(b) Applicants") request that the Commission issue an order pursuant to Section 26(b) of the Act approving the substitutions by AGAIC of shares held by corresponding sub-accounts of the Account as follows: (a) Shares of AGSPC's Government Securities Fund for shares of the Trust's American General U.S. Government Securities Portfolio; (b) shares of AGSPC's Growth & Income Portfolio for shares of the Trust's Credit Suisse Growth and Income Portfolio; (c) shares of AGSPC's International Equities Fund for shares of the Trust's Credit Suisse International Equities Portfolio; (d) shares of OCCAT's Managed Portfolio for shares of the Trust's Elite Value Portfolio; (e) shares of AGSPC's Stock Index Fund for shares of the Trust's State Street Global Advisors Growth Equity Portfolio; (f) shares of AGSPC's Money Market Fund for shares of the Trust's State Street Global Advisors Money Market Portfolio; and (g) shares of LIT's Emerging Growth Portfolio for shares of the Trust's Van Kampen Emerging Growth Portfolio.

3. The Contracts expressly reserve to AGAIC the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account of the Account. The prospectuses for the Contracts contain appropriate disclosure of this right.

4. In the case of the proposed substitution of shares of OCCAT's

Managed Portfolio and LIT's Emerging Growth Portfolio for shares of the Trust's Elite Value and Van Kampen Emerging Growth Portfolios, the Trust's portfolios are being replaced by the funds after which they were modeled. However, Applicants state that the replacement funds have substantially lower expense ratios, on a gross basis (and within 0.13% on a net basis); superior historical performance and investment objectives that are essentially identical.

5. With respect to the substitution of shares of AGSPC's Government Securities Fund for shares of the Trust's American General U.S. Government Securities Portfolio, shares of AGSPC's Growth & Income Fund for shares of the Trust's Credit Suisse Growth and Income Portfolio, and shares of AGSPC's Money Market Fund for the Trust's State Street Global Advisors Money Market Portfolio, Applicants state that the replacement funds have substantially lower expense ratios, on a gross basis (and within .05% on a net basis); superior historical performances, and investment objectives that are substantially the same.

6. With respect to the substitution of shares of AGSPC's International Equity Fund for shares of the Trust's Credit Suisse International Equity Portfolio, and shares of AGSPC's Stock Index Portfolio for shares of the Trust's State Street Global Advisors Growth Equity Portfolio, Applicants state that the replacement funds also have lower expense ratios, on a subsidized and unsubsidized basis, superior historical performance, and sufficiently similar investment objectives to make them appropriate replacement candidates.

7. The Substitution Applicants anticipate that Contract owners will be at least as well off with the array of sub-accounts offered after the proposed substitutions as they have been with the array of sub-accounts offered prior to the substitutions. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values between and among the same number of sub-accounts as they could before the proposed substitutions.

8. Applicants submit that none of the proposed substitutions is the type of substitution that Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner that permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer contract values into other sub-accounts. Moreover,

Contract owners will be offered the opportunity to transfer amounts out of the affected sub-accounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption that Section 26(b) was designed to prevent. In addition, other factors that may have influenced a Contract owner to purchase a Contract, such as AGAIC's size, financial condition, and reputation and the type of insurance coverage and benefits provided by the Contract, will remain the same.

9. The Section 26(b) Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by AGAIC. The Section 26(b) Applicants submit that, for all the reasons stated above, the proposed substitutions are inconsistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

10. AGAIC, the Account, AGSPC and the Trust ("Section 17(b) Applicants") request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the Act to the extent necessary to permit them to carry out the following proposed substitutions of shares held by corresponding sub-accounts of the Account: (1) Shares of AGSPC's Government Securities Fund for shares of the Trust's American General U.S. Securities Portfolio; (2) shares of AGSPC's Growth & Income Fund for shares of the Trust's Credit Suisse Growth and Income Portfolio; (3) shares of AGSPC's International Equity Fund for shares of the Trust's Credit Suisse International Equity Portfolio; (4) shares of AGSPC's Stock Index Fund for shares of the Trust's State Street Global Advisors Growth and Equity Portfolio; and (5) shares of AGSPC's Money Market Fund for shares of the Trust's State Street Global Advisors Money Market Portfolio (the "In Kind Transactions").

11. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any securities or other property to that company. Section 17(a)(2) of the Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

12. Section 2(a)(3) of the 1940 Act defines the term "affiliated person of another person" in relevant part as: (A) Any person directly or indirectly owning, controlling, or holding with

power to vote, 5 percent or more of the outstanding voting securities of such other person; (B) any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; and (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

13. Applicants submit that the Trust and AGSPC and the portfolios/funds of each may be affiliated persons of each other or affiliated persons of affiliated persons of each other. Each may also be an affiliate person of AGAIC. The proposed In Kind Transactions could be seen as the indirect purchase of shares of AGSPC funds with portfolio securities of the Trust's portfolios and the indirect sale of portfolio securities of the Trust's portfolios for shares of the AGSPC funds. Pursuant to this analysis, the proposed In Kind Transactions could also be viewed as a purchase or sale of such securities to funds of AGSPC by AGAIC acting as principal. If categorized in this manner, the proposed In Kind Transactions would contravene Section 17(a).

14. Section 17(b) of the Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from the provisions of Section 17(a) if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

15. Rule 17a-7 under the 1940 Act exempts from the prohibitions of Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment advisor or investment advisors which are affiliated persons of

each other, common directors, and/or common officers.

16. AGAIC, the Trust and AGSPC cannot, however, rely on Rule 17a-7 in connection with their participation as principals in the proposed In Kind Transaction because they are not affiliated persons of each other solely by reason of having a common investment advisor or affiliated investment advisors, common directors, and/or common officers. Moreover, one of the conditions enumerated in Rule 17a-7 requires that the transaction be a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available. The proposed purchase of AGSPS shares with the Trust's securities, however, entails the purchase and sale of securities for securities.

17. The Section 17(b) Applicants submit that the terms of the proposed substitutions by AGAIC, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17(b) Applicants also submit that the proposed In Kind Transactions are consistent with the policies of each of the investment companies involved as recited in the current registration statements and reports filed by the Trust filed under the 1940 Act.

18. The Section 17(b) Applicants maintain that the terms of the proposed transaction, including the consideration to be paid and received, are reasonable, fair and do not involve overreaching because (1) the transactions do not cause owner's interests under a contract to be diluted and (2) the transactions will comply with the conditions set forth in Rule 17a-7, other than the requirement related to consideration. The In Kind Transaction will take place at relative net asset value with no change in amount of any Contract owner's contract or cash value or death benefit or the dollar value of his or her investment in the account.

19. The Section 17 Applicants state that the board of trustees/directors of the Trust and AGSPC have adopted procedures, as required by paragraph (e)(1) of Rule 17a-7, pursuant to which the series of each may purchase and sell securities to and from their affiliates. The Section 17(b) Applicants represent that they will carry out the proposed substitutions in conformity with the conditions of Rule 17a-7 and each series' procedures thereunder, except that the consideration paid for the securities being purchased or sold will not be entirely in cash. The proposed transactions will be effected based upon

the independent current market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a-7 and the net asset value per share of each fund involved will be valued in accordance with the procedures disclosed in the Trust's and AGSPC's registration statements and as required by Rule 22c-1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the boards of trustees/directors of each of the Trust and AGSPC will subsequently review the proposed substitutions and make determinations required by paragraph (e)(3) of Rule 17a-7.

20. Applicants assert that the proposed redemption of shares of the Trust is consistent with the investment policy of the Trust and each of its portfolios, provided that the shares are redeemed at their net asset value in conformity with Rule 22c-1 under the Act. Likewise, the sales of shares of the AGSPC funds for investment securities, as contemplated by the proposed substitutions, is consistent with the investment policies of each its funds, as recited in AGSPC's registration statement, provided that (a) the shares are sold at their net asset value and (b) the investment securities are of the type and quality that the respective funds would each have acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second condition is met, VALIC will examine the portfolio securities being offered to each AGSPC fund and accept only those securities as consideration for shares that it would have acquired for such fund in a cash transaction.

21. The Section 17(b) Applicants submit that, for all the reasons stated above, the terms of the proposed In Kind Transactions, including the consideration to be paid and received, are reasonable and fair to: (1) AGSPC and its funds, (2) the Trust and its portfolios, and (3) Contract owners invested in AGSPC's funds and the Trust portfolios; and do not involve overreaching on the part of any person concerned. Furthermore, the Section 17(b) Applicants represent that the proposed substitutions will be consistent with the policies of: (a) AGSPC and its funds and (b) the Trust and its portfolios, as is, or will be, stated in the registration statement and reports filed under the Act by each, and with the general purposes of the Act.

#### Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested orders meet the standards set

forth in Sections 26(b) and 17(b) of the 1940 Act and should be granted.

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

**Jonathan G. Katz,**

*Secretary.*

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BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of December 6, 1999.

An open meeting will be held on Wednesday, December 8, 1999 at 10:00 a.m.

The subject matter of the open meeting scheduled for Wednesday, December 8, 1999, at 10:00 a.m., will be:

Adopting an amendment to the Intermarket Trading Systems (ITS) Plan, expanding the ITS/Computer Assisted Execution System linkage to all listed securities. For further information, please contact Christine Richardson at (202) 942-0748.

Issuing a concept release on market information fees and the role of revenues generated by such fees in funding the operation and regulation of the markets. The release would describe the current arrangements for disseminating market information and invite public comment on ways in which the arrangements could be revised to further the Securities Exchange Act of 1934 ("Exchange Act") national market system objectives. For further information, please contact Daniel M. Gray at (202) 942-4164.

Proposing an amendment to Rule 12f-2 under the Exchange Act which governs unlisted trading privileges in listed initial public offerings. For further information, please contact Kevin Ehrlich at (202) 942-0778.

The Commission will hear oral argument on an appeal by the Division of Enforcement from an administrative law judge's initial decision imposing sanctions on Clarence Z. Wurts. The law judge found that Wurts failed reasonably to supervise Michael G. Cohen, a registered representative, with a view to preventing violations of the federal securities laws. For further information, please contact Diane V. White at (202) 942-0959.

At times, changes in Commission priorities require alternations in the