

7. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company.<sup>3</sup> The section was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicant believes that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees.

8. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the 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, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicant believes that the proposed transaction satisfies the criteria of section 17(b). Applicant also requests relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan on an ongoing basis.<sup>4</sup>

9. Section 17(d) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant in contravention of such rules and regulations as the SEC may prescribe. Rule 17d-1 permits an affiliated person to engage in a joint transaction if the SEC issues an order. Eligible Trustees will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Trustees will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Trustee, the Eligible Trustee will be no better off, relative to the Fund, than if he or she

had received trustees fees on a current basis and invested them in Shares.

#### Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. With respect to the relief requested from rule 2a-7, the Cash Reserves Portfolio, and any other Fund or portfolio that is a money market fund that values its assets in accordance with a method prescribed by rule 2a-7, will buy and hold the Shares that determine the value of the Deferral Accounts to achieve an exact match between such portfolio's or Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a portfolio or Fund purchases Shares issued by an affiliated portfolio or Fund, the acquiring portfolio or Fund will vote such Shares in proportion to the votes of all other holders of Shares of such affiliated portfolio or Fund.

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

Margaret H. McFarland,

*Deputy Secretary.*

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#### [Investment Company Act Release No. 21868; 812-9964]

#### Norwest Advantage Funds, et al.; Notice of Application

April 2, 1996.

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

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

**APPLICANTS:** Norwest Advantage Funds (the "Trust") and Norwest Bank Minnesota, N.A. (the "Adviser").

**RELEVANT ACT SECTIONS:** Order requested under section 17(b) for an exemption from section 17(a).

**SUMMARY OF APPLICATION:** Applicants request an order under section 17(b) granting an exemption from section 17(a) to permit the Stable Income Fund, Intermediate U.S. Government Fund, and Income Equity Fund (the "Acquiring Funds") to acquire all of the assets of the Adjustable U.S. Government Reserve Fund, Government Income Fund, and Income Stock Fund (the "Transferor Funds," or collectively with the Acquiring Funds, the "Funds"), respectively. Each Fund is a series of the Trust.

**FILING DATE:** The application was filed on January 30, 1996, and amended on April 1, 1996.

**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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1996, and should be accompanied by proof of service on applicant, 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 by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: The Trust, Two Portland Square, Portland, Maine 04101, Attention: David I. Goldstein; The Adviser, Norwest Center, Sixth and Marquette, Minneapolis, Minnesota 55479-1026, Attention: Jeffrey P. Lund.

**FOR FURTHER INFORMATION CONTACT:** Mercer E. Bullard, Staff Attorney, (202) 942-0565, or Alison E. Baur, Branch Chief, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### Applicant's Representations

1. The Trust is a registered open-end management investment company that is organized as a Delaware business trust. The Adviser is a national bank that is a wholly-owned subsidiary of Norwest Corporation. The Adviser is the investment adviser to each series of the Trust, including the Funds.

2. The Adviser holds of record more than twenty-five percent of the total outstanding shares of each Transferor Fund in a trust, agency, custodial, or other fiduciary or representative capacity. While the Adviser may exercise voting power with respect to the shares, neither the Adviser nor any of its affiliates have any economic interest in the shares to be paid.

3. Each Transferor Fund offers shares in three classes: Class A, Class B, and Class I. Each Acquiring Fund offers one class of shares and recently filed a post-effective amendment to its registration statement to register two additional classes of shares. The amendment

<sup>3</sup>Section 2(a)(3)(C) of the Act defines the term "affiliated person" of another person to include any person controlling, controlled by, or under common control with such other person. Thus, the Fund and each of its portfolios may be subject to the prohibitions of section 17(a)(1).

<sup>4</sup>Section 17(b) may permit only a single transaction, rather than a series of on-going transactions, to be exempted from section 17(a). See *Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

became effective on February 29, 1996, and applicants expect to begin offering the new classes of shares in April 1996. The class and expense structure of each Transferor Fund is similar to the class and expense structure of its corresponding Acquiring Fund.

4. Applicants propose that the Transferor Funds be combined with and into the Acquiring Funds in a tax-free reorganization (the "Reorganization"). In the Reorganization, each Acquiring Fund will acquire all of the assets and liabilities of its corresponding Transferor Fund in exchange for shares of the Acquiring Fund, which shares will then be distributed to shareholders of the Transferor Fund. Each class of shares of an Acquiring Fund will be exchanged for the corresponding class of shares of a Transferor Fund. The number of Acquiring Fund shares to be issued in exchange for each Transferor Fund share will be determined by dividing the net asset value of a share of a class of a Transferor Fund by the net asset value of a share of the corresponding class of the corresponding Acquiring Fund as of the last business day preceding the closing date of the Reorganization (the "Exchange Price"). No transactions in shares of the Funds (other than under the terms of the Reorganization) may be effected at the Exchange Price if the order is received or accepted after the calculation of that price.

5. At a meeting on December 29, 1995, the board of the Trust, including the disinterested directors, made the findings required under rule 17a-8 and approved the Reorganization. In doing so, the board considered the following factors: (i) the similarities between each Transferor Fund and its corresponding Acquiring Fund with respect to investment objectives, policies, and restrictions, and risk profiles, (ii) the burdens of marketing two similar Funds, (iii) the benefits to the shareholders of combining the Funds' assets, (iv) the fact that the expense ratios of the Acquiring Funds will be no higher than those of the corresponding Transferor Fund, (v) the more established performance record of the Acquiring Funds, (vi) the treatment of the uncovered distribution charges of the Transferor Funds, (vii) the tax-free nature of the Reorganization, (viii) the terms and conditions of the Reorganization and whether it would result in dilution of shareholder interests, and (ix) the costs of the Reorganization.

6. In approving the Reorganization, the board of the Trust noted that the contractual fees payable by the Acquiring Funds for the advisory and

custodial services provided by the Adviser were lower than those payable by the corresponding Transferor Funds. Accordingly, the board approved payment of all expenses incurred in connection with the Reorganization by the Funds, including all expenses related to obtaining exemptive relief from the SEC.

7. On February 14, 1996, the Trust filed a registration statement on Form N-14 with respect to the Reorganization which became effective on March 15, 1996. Shareholders of the Transferor Funds will vote on the Reorganization at a meeting that applicants expect to occur on May 13, 1996.

Notwithstanding shareholder approval of the Reorganization, the closing of the Reorganization may be postponed and the board may terminate the Plan of Reorganization at any time prior to closing. Termination of the Plan may relate to one Transferor fund and its corresponding Acquiring Fund without affecting the survival of the Plan with respect to any other Fund. Applicants agree not to make any material change to the reorganization that would affect the application without prior SEC approval.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of such other person.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if 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 the registered investment company concerned and with the general purposes of the Act.

4. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons 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.

5. Applicants may not rely on rule 17a-8 in connection with the Reorganization because the Transferor funds and the Acquiring Funds may be deemed to be affiliated for reasons other than those set forth in the rule. As noted above, the Adviser holds of record more than twenty-five percent or the total outstanding shares of each Transferor Fund in a trust, agency, custodial or other fiduciary or representative capacity. The Adviser therefore may be deemed to be an affiliated person of the Transferor Funds because it controls or holds with the power to vote more than five percent of the Funds' outstanding voting securities.

6. Applicants submit that the Reorganization meets the standard for relief under section 17(b), in that the terms of the Reorganization are reasonable and fair and do not involve overreaching on the part of any person concerned; and the Reorganization is consistent with the provisions, policies, and purposes of the Act and with the policies of the Funds.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 33-7277, File No. S7-9-96]

#### Securities Uniformity; Annual Conference on Uniformity of Securities Law

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of release announcing issues to be considered at a conference on uniformity of securities laws and requesting written comments.

**SUMMARY:** In conjunction with a conference to be held on April 29, 1996, the Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for the conference. This meeting is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, to maximize the effectiveness of securities regulation in promoting investor protection, and to reduce burdens on