SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25446; 812–12018]

The Vantagepoint Funds and Vantagepoint Investment Advisers, LLC; Notice of Application

February 26, 2002.

AGENCY: Security and Exchange Commission (''Commission'').

ACTION: Notice of an application under: (a) Section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

*Summary of Application:*Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer that is an affiliated person of an investment adviser to another portion, subject otherwise to the limits in rule 12d3–1 under the Act.

Applicants: The Vantagepoint Funds (the ''Fund'') and Vantagepoint Investment Advisers, LLC (''VIA'').

*Filing Dates.*The application was filed on March 7, 2000 and amended on February 26, 2002.

*Hearing or Notification of Hearing:*An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 777 North Capitol Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act and currently consists of nineteen investment portfolios (''Portfolios''). VIA is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is a wholly-owned subsidiary of ICMA Retirement Corporation. VIA serves as investment adviser to the Portfolios, including Portfolios (''Multi-Managed Portfolios'') that are advised by VIA and investment subadvisers (''Subadvisers''). Each Subadviser is registered under the Advisers Act or is exempt from registration. Each Subadviser is responsible for making independent investment and brokerage allocation decisions for a discrete portion of a Multi-Managed Portfolio based on its own research and credit evaluations. Each Subadviser is compensated directly by the Fund based on a percentage of the average daily net assets of the discrete portion of the Multi-Managed Portfolio allocated to the Subadviser. VIA also may directly advise a discrete portion of a Multi-Managed Portfolio.

2. Applicants request relief to permit: (a) A broker-dealer that serves as a Subadviser or is an affiliated person of a Subadviser (the broker-dealer, an ''Affiliated Broker-Dealer;'' the Subadviser, an ''Affiliated Subadviser'') to engage in principal transactions with a portion of a Multi-Managed Portfolio that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Subadviser (the portion, an ''Unaffiliated Portion''; the other Subadviser, an ''Unaffiliated Subadviser''); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17e–1(b) or (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (''Affiliated Underwriter''); (d) a portion advised by an Affiliated Subadviser (''Affiliated Portion'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions; and (e) an Unaffiliated Portion to purchase securities issued by an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, that is involved in securities-related activities (''Securities Affiliate''), subject otherwise to the limits in rule 12d3–1 under the Act.[1]

3. Applicants request that the exemptive relief apply to any open-end management investment company registered under the Act or current or future portfolio of such company for which VIA or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with VIA currently or in the future acts as an investment adviser. The Fund is the only registered investment company that currently intends to rely on the order. VIA will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

[1] The terms ''Unaffiliated Subadviser'' and ''Subadviser'' include VIA and the term ''Unaffiliated Portion'' includes the discrete portion of a Multi-Managed Portfolio directly advised by VIA, provided that VIA manages its portion of the Multi-Managed Portfolio independently of the portions managed by other Subadvisers to the Multi-Managed Portfolio, and VIA does not control or influence any other Subadviser's investment decisions for its portion of the Multi-Managed Portfolio. VIA does not currently manage directly any portion of a Multi-Managed Portfolio

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter (''second-tier affiliate''). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Multi-Managed Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus a second-tier affiliate of a Multi-Managed Portfolio, including the Unaffiliated Portions. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a)(1) and (2).

2. Applicants seek relief under section 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a)(1) and (2) where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act 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 policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser were to purchase securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the average daily net assets of the portion of the Multi-Managed Portfolio allocated to their management. The execution of a transaction to the disadvantage of an unaffiliated Portion would also disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further state that VIA's power to dismiss Subadvisers or to change the portion of a Multi-Managed Portfolio allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its own portion of the Multi-Managed Portfolio.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Multi-Managed Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants that VIA does not dictate brokerage allocation or investment decisions for any Multi-Managed Portfolio, or have the contractual right to do so, except for any portion of a Multi-Managed Portfolio advised directly by VIA. Applicants submit that, in managing a discrete portion of a Multi-Managed Portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Managed Portfolio, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and policies of the Multi-Managed Portfolio as described in its registration statement. Applicants assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Multi-Managed Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Portions to Affiliated Broker-Dealers

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as a broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interest persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of a Multi-Managed Portfolio) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request relief under section 6(c) from section 17(e). Applicants request relief under section 6(c) from section 17(e) of the Act and rule 17e–1 under the Act to the extent necessary to permit the Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker Dealer acting as broker in the ordinary course of business without complying with the requirements of rule 17e–1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c) of the Act. Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker Dealers only if the fees charged are reasonable and fair, as required by rule 17e–1(a). Applicants note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) when a principal underwriter of the security, or an affiliated person of the principal writer, is an officer, director, member of an advisory board, investment adviser, or employee of the investment company. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser although under contract to manage only a discrete portion of a Multi-Managed Portfolio, is an investment adviser to the Multi-Managed Portfolio. Therefore, all purchases of securities by an Unaffiliated Portion from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, would be subject to section 10(f).

3. Applicants request relief under section 10(f) to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent that those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Multi-Managed Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase is in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from the underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Portfolios because a decision by an Unaffiliated Subadviser to a discrete portion of a Multi-Managed Portfolio to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants state that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

D. Purchases of Securities Issued by Securities Affiliates

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under Act exempts certain transactions from the prohibitions of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in paragraph (c) of rule 12d3–1, provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment adviser, promoter, or principal underwriter.

2. Applicants state that because each Subadviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3–1. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion to acquire securities issued by a Securities Affiliate subject to the limits in rule 12d3–1, except for paragraph (c) to the extent that the paragraph applies solely because the Securities Affiliate is an Affiliated Subadviser, or an affiliated person of an affiliated Subadviser. The requested relief would not extend to securities by the Subadviser making the purchase, VIA, or an affiliated person of any of these entities.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of shareholders by preventing the Unaffiliated Subadviser form achieving optimal investment results.

Applicant's Conditions

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

1. Each Multi-Managed Portfolio will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser, and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter, or Securities Affiliate (except by virtue of serving as Subadviser to a discrete portion of a Multi-Managed Portfolio) will be an affiliated person or a second-tier affiliate of (a) VIA, (b) any Unaffiliated Subadviser, (c) any principal underwriter or promoter of the Multi-Managed Portfolio, or (d) any officer, director or employee of the Multi-Managed Portfolio.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions or concerning the purchase of the securities issued by Securities Affiliates. Subadvisers may consult with VIA in order to monitor regulatory compliance, including compliance with the limits of rule 12d3–1.

4. No Affiliated Subadviser will participate in any arrangement whereby

the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5146 Filed 3–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45479; File No. SR–CBOE–2001–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Minimum Trading Increments for Spread, Straddle, and Combination Orders in Options on the S&P 500 Index

February 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 6.42, *Minimum Increments for Bids and Offers,* to require that bids and offers on spread, straddle, or combination orders in options on the S&P 500 Index, except for box spreads, be expressed in decimal increments no smaller than $0.05. The text of the proposed rule change appears below. New text is in *italics.*

Chicago Board Options Exchange, Incorporated Rules

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Chapter VI—Doing Business on the Exchange Floor

Section C: Trading Practices and Procedures

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Rule 6.42. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum trading increments for options traded on the Exchange. When the Board of Directors determines to change the trading increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission, provided, however, that no change may be made to the minimum trading increment as set forth in this Rule for options trading in decimals that is inconsistent with the Decimals Implementation Plan (''Plan'') submitted to the Commission on July 24, 2000, and that otherwise changes the minimum trading increment for options trading in decimals unless the change has been filed with the Commission pursuant to rule 19b–4(f)(6) under section 19(b) of the Exchange Act. Subject to the foregoing, the following minimum trading increments shall apply to options traded on the Exchange:

(1) Subject to paragraph (2) below, bids and offers shall be expressed in decimal increments no smaller than $0.10 for option classes trading in decimals or eighths of $1 (e.g., 3⅛) for option classes trading in fractions, unless a different increment is approved by the appropriate Floor Procedure Committee for an option contract of a particular series.

(2) Bids and offers for all option series quoted below $3 a contract shall be expressed in decimal increments no smaller than $0.05 for options trading in decimals or sixteenths of a dollar (e.g., 1/16) for options trading in fractions.

(3) Bids and offers on spread, straddle, or combination orders as defined in Rule 6.53 may be expressed in any decimal or fractional price regardless of the minimum increments otherwise appropriate to the individual legs of the order. *Notwithstanding the foregoing sentence, bids and offers on spread, straddle or combination orders in options on the S&P 500 Index, except for box spreads, shall be expressed in decimal increments no smaller than $0.05.* Spread, straddle or combination orders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority under Rule 6.45 as such orders expressed in increments that are multiples of the minimum increment.

Interpretations and Policies

.01–.04 Unchanged.

.05 For purposes of this rule, ''box spread'' means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

CBOE Rule 6.42 establishes the minimum trading increments for options traded on the Exchange. CBOE Rule 6.42(1) provides that, subject to Rule 6.42(2), bids and offers shall be expressed in decimal increments no smaller than $0.10 unless a different increment is approved by the appropriate Floor Procedure Committee for an option contract of a particular

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.