SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25053; 812–12302]

The Huntington Funds, et al.; Notice of Application

June 27, 2001.

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

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: The Huntington Funds, Huntington, VA Funds (collectively, the ''Trusts''), and Huntington Asset Advisors, Inc. (the ''Adviser'').

Filing Dates: The application was filed on October 16, 2000 and amended on June 14, 2001.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2001, 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, N.W., Washington, D.C. 20549–0609. Applicants, c/o Paul R. Rentenbach, Esq., Dykema Gossett, PLLC, 400 Renaissance Center, Detroit, Michigan 48243–1668.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Attorney-Adviser, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicants' Representations

1. The Trusts, organized as Massachusetts business trusts, are registered under the Act as open-end management investment companies. The Huntington Funds currently consists of twelve series and the Huntington VA Funds currently consists of two series (together with any registered open-end management investment company or series thereof that currently, or in the future, is advised by the Adviser, the ''Funds'').[1] The shares of the Huntington VA Funds are sold exclusively to insurance company separate accounts that fund variable annuity and variable life contracts. Certain Funds hold themselves out as money market Funds and comply with rule 2a–7 under the Act (the ''Central Funds''). The Adviser is an indirect wholly-owned subsidiary of Huntington Bancshares Incorporated, a publicly-held bank holding company. The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.[2]

2. Applicants state that each Participating Fund (as defined below) has, or may be expected to have, cash that has not been invested in portfolio securities (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors. A Fund that purchases shares of the Central Funds is referred to as a Participating Fund. The Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to broker-dealers or other institutional investors (''Securities Lending Program''). The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

3. Applicants request an order to permit each of the Participating Funds to invest their Cash Balances in one or more of the Central Funds, and the Central Funds to sell their shares to, and redeem their shares from, the Participating Funds. Investment of Cash Balances in shares of the Central Funds will be made only to the extent that such investments are consistent with each Participating Fund's investment restrictions and policies as set forth in the Participating Fund's prospectus and statement of additional information. Applicants state that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Participating Funds to invest Cash Balances in the Central Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants

[1] Each Fund that currently intends to rely on the requested relief is a series of one of the Trusts named as an applicant. Any future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

[2] For the purposes of this application, the term ''Adviser'' includes, in addition to Huntington Asset Advisors, Inc., any other person controlling, controlled by or under common control with Huntington Asset Advisors, Inc. that acts in the future as an investment adviser to a Fund.

state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund will not be in a position to gain undue influence over a Central Fund through threat of redemption. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Central Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' (''NASD'') Conduct Rules). Applicants state that if a Central Fund offers more than one class of shares, a Participating Fund will invest its Cash Balances only in the class with the lowest expense ratio (taking into account the expected impact of the Participating Funds investment) at the time of investment. In connection with approving any advisory contract for a Participating Fund, the Participating Fund's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (the ''Disinterested Trustees'') will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Fund by the Adviser as a result of the investment of Uninvested Cash in the Central Funds. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of an investment company to include, among others, any person directly or indirectly controlling, controlled by, or under common control with the investment company and any investment adviser to the investment company. Applicants state that, because the Funds share a common Board, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. In addition, because a Participating Fund may acquire 5% or more of a Central Fund, each Fund may be deemed to be an affiliated person of the other Fund. As a result, section 17(a) would prohibit the sale of the shares of a Central Fund to the participating Funds, and the redemption of the shares by a Central Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if 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, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the commission to exempt persons or transactions 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 policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Central Fund has the right to discontinue selling shares to any of the Participating Funds if the Central Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Participating Fund, by purchasing shares of a Central Fund, the Adviser, by managing the assets of the Participating Funds investing in a Central Fund, and a Central Fund, by selling shares to the Participating Funds, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Participating Funds in shares of a Central Fund would be on the same basis and would be indistinguishable from any other shareholder account maintained by the Central Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

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

1. Shares of the Central Funds sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules).

2. Before the next meeting of the Board is held for purposes of voting on an advisory contract under section 15 of the act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any advisory contract for a Participating Fund, the Board, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Funds by the Adviser as a result of the Uninvested Cash being invested in the Central Fund. The minute books of the Participating Fund will record fully the Board's considerations in approving the advisory contract, including the considerations referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed 25 percent of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in the prospectus and statement of additional information.

5. Each Participating Fund, Central Fund, and any future Fund that may rely on the order shall be advised by the Adviser.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Fund's participation in the Securities Lending Program. Such Trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the shareholders of the Fund.

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. 34–44477; File No. SR–AMEX–2001–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the American Stock Exchange LLC Relating to Members' Written Proposals To List Equity Option Classes

June 27, 2001.

I. Introduction

On March 8, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 adopting formal procedures for members to submit proposals to list option classes on the Exchange. The Exchange submitted an amendment to the proposed rule change on April 17, 2001.[3] the **Federal Register** published the proposed rule change for comment on April 30, 2001.[4] The Commission receive no comments on the proposal. The Exchange filed Amendment No. 2 to the proposed rule change on June 22, 2001.[5] This order approves the proposed rule change and grants accelerated approval to Amendment No. 2. The Commission also is soliciting comment on Amendment No. 2 to the proposed rule change.

II. Description of the Proposal

The proposed rule change would adopt formal procedures for members to submit proposals to list option classes on the Exchange, and would codify the factors considered by the Exchange in listing option classes.[6] The Exchange would be required to review and make a determination regarding a member's listing proposal within 25 days of receipt of the proposal. If the Exchange decides not to list the proposed option class or to limit or condition the listing of the option in any way, the Exchange would be required, in writing and within the 25-day period, to inform the member of the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by providing formal procedures for members to request the listing of options on the Exchange. The proposal would required the Exchange to respond in writing within 25 days to requests by members to list options. The Commission believes that the proposed procedures and time frames set forth in the proposed rule change are reasonable and adequately balance the Exchange's need to thoroughly examine proposed listings before making its determination with its members' need for a prompt and specific response to its listing recommendation.

In addition, the proposed rule change codifies the factors to be considered by the Exchange in determining whether to list a recommended option. The Commission believes that the proposed factors represent legitimate issues that the Exchange may consider when making a listing decision. The Commission notes that if the Exchange denies or places conditions or limitations upon a proposed listing, it must include its reasons in the letter notifying the member of its decision. The Commission believes that this requirement should help to ensure that the Exchange relies on upon the factors codified in its rules when making a listing decision.

The Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 2 provides useful clarification to the proposed

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), Commission, dated April 16, 2001 (''Amendment No. 1''). Amendment No. 1 revises proposed Commentary .08 to Amex Rule 915 to require the Amex to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposal listing.

[4] Securities Exchange Act Release No. 44211 (April 23, 2001), 66 FR 21421.

[5] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 21, 2001 (''Amendment No. 2''). Amendment No. 2 revised Commentary .08 to Amex Rule 915 to clarify that when the Exchange relies upon other bona fide business considerations in denying or placing conditions or limitations upon a member listing proposal, the Exchange must provide the member with a written response specifying that the Exchange has relied upon other bona fide business considerations, in addition to maintaining a record of the bona fide business considerations supporting its decision.

[6] As part of a settlement of an enforcement action by the Commission, four of the five options exchanges, including the Amex, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 200).

[7] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).