116 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Capital Research and Management Company — Docket No. EC06-129-000
AMCAP Fund, Inc.
American Balanced Fund, Inc.
American High-Income Trust
American Mutual Fund, Inc.
Capital Income Builder, Inc.
Capital World Bond Fund, Inc.
Capital World Growth and Income Fund, Inc.
EuroPacific Growth Fund
Fundamental Investors, Inc.
New Perspective Fund, Inc.
New World Fund, Inc.
SMALLCAP World Fund, Inc.
The Bond Fund of America, Inc.
The Growth Fund of America, Inc.
The Income Fund of America, Inc.
The Investment Company of America
The New Economy Fund
Washington Mutual Investors Fund, Inc.
American Funds Insurance Series
Endowments
Capital International Global Discovery
Capital International Global Equity
Capital International Funds – European Equity Investors
Capital International Funds – U.S. Equity Investors

ORDER ON REQUEST FOR BLANKET AUTHORIZATIONS TO ACQUIRE SECURITIES

(Issued September 22, 2006)

1. On June 1, 2006, as amended on June 15, 2006 and July 21, 2006, Capital Research and Management Company (CRMC), on behalf of itself and certain mutual funds it manages (Applicant Funds)[1] (collectively, Applicants) filed with the Commission a request for blanket authorization to acquire utility securities under section 203 of the Federal Power Act (FPA).[2] In this order, the Commission grants in part and denies in part the request for blanket authorizations under FPA section 203, subject to the conditions and limitations described below. The Commission finds that under existing regulatory requirements and the conditions proposed by Applicants as modified herein, the blanket authorizations are consistent with the public interest.

I. Background

2. CRMC, directly and through its subsidiaries (collectively, the CRMC Companies), provides investment management services to 31 mutual funds in the United States, as well as four funds domiciled outside of the United States (collectively, the Mutual Funds).[3] Applicants state that the sole business of the CRMC Companies is investment management.[4] Neither CRMC nor the Applicant Funds have energy-related subsidiaries or affiliates.

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[1] The Applicant Funds are identified in Attachment A. The June 1 filing is a request by CRMC for blanket authorization to acquire securities under section 203. The June 15 filing supplements the June 1 filing to provide the information required as Exhibit M to a section 203 application under Part 33 of the Commission's Rules and Regulations. The July 21 filing (hereinafter Amended Application) amends the original application to include CRMC and the Applicant Funds as applicants and provides additional supporting material.

[2] 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (EPAct 2005).

[3] The Applicant Funds are 20 domestic Mutual Funds and four non-U.S. Mutual Funds. The four non-U.S. Mutual Funds as a group represent less than 0.1 percent of the assets managed by CRMC. Amended Application at 5.

[4] We note that, according to the Applicant Funds' website, the CRMC mutual fund family has 75 years of investment experience and is one of the three largest mutual fund families in the country, with over $600 billion in investments under management and over 35 million shareholder accounts. *See* American Funds, *About Us*, *available at* http://www.americanfunds.com/about/index. CRMC operates in an industry that collectively has under management nearly $10 trillion in assets domestically and nearly

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3. CRMC is a wholly-owned subsidiary of The Capital Group Companies, Inc. (CGC). CGC also owns Capital Group International, Inc. (CGII) which also, directly and through subsidiaries (collectively, the CGII Companies), provides similar investment management services to individuals, pension funds and other institutional clients.

II. Application

4. Applicants state that, in the ordinary course of business, CRMC purchases the voting securities of publicly-traded utilities and utility holding companies on behalf of the Applicant Funds. CRMC does not buy utility securities for its own account. Consistent with their governing documents, the Applicant Funds can invest in utility voting securities. All but six of the Applicant Funds have delegated voting authority to CRMC. Applicants state that because CRMC has been delegated the authority to vote securities held by certain of the Applicant Funds, future acquisitions of utility voting securities could be attributed to CRMC such that CRMC could be deemed a "holding company" and therefore, the purchase of securities could require prior authorization under section 203.

5. Applicants state that CRMC's portfolio managers buy and sell voting securities on behalf of the Applicant Funds on a constant basis, and desire to be able to purchase up to 10 percent of the voting securities of a single public utility on behalf of a single mutual fund.[5] Because multiple portfolio managers may seek the same investment and because portfolio managers may seek to make the same investment for several different mutual funds, Commission authorization is needed. Applicants seek blanket authorizations that the Applicant Funds may collectively own up to 20 percent of the voting securities of any one public utility. Without this authorization, CRMC "could in some instances be forced

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$18 trillion worldwide. *See* Investment Company Institute, *Mutual Funds: Investing in America's Future, available at* http://www.ici.org. As of October 31, 2005, 6.48 percent of the net assets administered by CRMC were classified in the utility sector. The utility sector includes public utilities as well as other energy-related companies such as pipelines. Amended Application at Attachment 3, American Mutual Fund Prospectus, Jan. 1, 2006 at Investment Portfolio, Oct. 31, 2005 at 3-4.

[5] CRMC states that each of the Applicant Funds is prohibited from owning more than 10 percent of the voting securities of a single company under its governing documents and/or internal CRMC policies. Amended Application at 11. CRMC is requesting, however, and the Commission is granting (as discussed below), authorization for acquisitions so that no individual Applicant Fund will own or hold *10 percent or more* of the voting securities of a single utility.

to make allocations of [u]tility securities to individual Applicant Funds in amounts that are less than optimal from a portfolio management perspective," and "[t]he lack of such authorization would significantly limit the potential amount of investment capital that could be invested in [u]tilities by the Applicant Funds."[6]

6. Specifically, Applicants seek blanket authorizations under sections 203(a)(1) and 203(a)(2) for: (1) CRMC to acquire on behalf of the Applicant Funds (and the Applicant Funds to hold) the voting securities of any "public utility," "electric utility company," "transmitting utility," or "holding company in a holding company system that includes an electric utility company or transmitting utility" as those terms are used in section 203 (collectively, Utility); and (2) Utilities or holders of Utility voting securities to sell such securities to CRMC, acting on behalf of the Applicant Funds, subject to certain conditions. Applicants seek the blanket authorizations subject to the following conditions and limitations:

> (1) CRMC will only acquire the securities of publicly-traded Utilities on behalf of the Applicant Funds.
>
> (2) No individual Applicant Fund will own or hold 10 percent or more of the voting securities of any one Utility.
>
> (3) The Applicant Funds collectively will not own more than 20 percent of the voting securities of any one Utility.
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> (4) The Mutual Funds (including the Applicant Funds) will each continue to maintain governing policies (and comply with statutory requirements as applicable) that prohibit the exercise of any control over entities whose securities they hold.
>
> (5) CRMC and the Applicant Funds will maintain their status as beneficial owners eligible to file Schedule 13G[7] under SEC

[6] Amended Application at 11.

[7] A Schedule 13G filer must "acquire[] such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect" over entities whose securities it holds and is required to file a notification with the Securities and Exchange Commission (SEC) of any acquisition of beneficial ownership of five percent or more of a class of equity securities. 17 C.F.R. § 240.13d-1 (2006). "Control," as defined in the SEC's regulations, means "the possession, direct or indirect, of the power to direct or cause the direction of the

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> rules under the Securities and Exchange Act of 1934 (1934 Act)[8] with respect to the acquisition and holding of more than five percent of any class of equity securities of a Utility, and will file a copy of Schedule 13G with the Commission when they file it with the SEC.

7. Applicants state that under the conditions set forth above, CRMC and the Applicant Funds "will essentially be passive investors and will not be able to exercise any control over Utilities."[9] Accordingly, Applicants seek the blanket authorizations on a permanent basis.

8. Applicants explicitly ask the Commission not to resolve any threshold jurisdictional issues.[10] They note that although the acquisitions requested in the Applicant may not in all (or any) cases require Commission authorization under section 203, CRMC and the Applicant Funds submit to the Commission's jurisdiction for purposes of obtaining approval of the transactions contemplated by the Application.

III. Notice of Filings

9. Notice of the June 1, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 34,914 (2006), with interventions, comments, or protests due on or before June 22, 2006. None was filed. Notice of the July 21, 2006 amended filing was published in the *Federal Register*, 71 Fed. Reg. 43,147 (2006), with interventions, comments, or protests due on or before August 11, 2006. None was filed.

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management and policies of a person, whether through the ownership of voting securities, by contract or otherwise." 17 C.F.R. § 240.12b-2 (2006).

[8] 15 U.S.C. § 78a *et seq.* (2000).

[9] Amended Application at 4.

[10] *Id.* Applicants rely on *Ocean State Power*, 47 FERC ¶ 61,321, at 62,130 (1989), for the proposition that the Commission may assume that it has jurisdiction over proposed transactions without ruling on threshold jurisdictional questions where the applicant has requested that the Commission assume that it has jurisdiction in order to facilitate the applicant's transactional efforts and where the request is not contested.

IV. Discussion

10. Section 203(a) of the FPA provides that the Commission must approve a jurisdictional transaction if it finds that the transaction "will be consistent with the public interest."[11] The Commission's analysis of whether a section 203 transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[12] In addition, EPAct 2005 amended section 203 to specifically require that the Commission also determine whether the transaction will result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, and, if it so determines, whether the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.[13] As discussed below, we will approve, in part, the request for blanket authorizations because it meets these statutory standards.

A. Effect on Competition

11. Applicants argue that the proposed transactions will have no adverse effect on competition because they will not have control over the utilities in which they buy securities. Applicants argue that the proposed transactions, while perhaps providing to CRMC and the Applicant Funds the means for control, direct or indirect, over generation

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[11] 16 U.S.C. § 824b (2000), *amended by* EPAct 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005).

[12] *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001); *see also Transactions Subject to Federal Power Act Section 203*, Order No. 669, 71 Fed. Reg. 1,348 (2006), FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (2006), FERC Stats. & Regs. ¶ 31,225 (2006) (to be codified at 18 C.F.R. Pt. 33).

[13] EPAct 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005), to be codified at 16 U.S.C. § 824b(a)(4).

or transmission facilities, they are precluded from exercising control as a result of the fiduciary obligations, investment policies, and federal and foreign securities laws.[14]

12. In addition, Applicants argue that, given that CRMC and CGII have disaggregated their investment activity, it is also appropriate to consider the beneficial holdings of CRMC and CGII separately. Applicants argue that CRMC and CGII comply with the SEC's Schedule 13G filing requirements independently, and thus each commits through public filings that they have no intent to acquire control over companies in which they invest.

13. As discussed in greater detail below, the Commission agrees with Applicants that, under the regulatory scheme administered by the SEC and the Applicants' proposed conditions (as approved by the Commission), control over public utilities cannot be exercised. Therefore, the Commission finds that the proposed transactions will have no adverse effect on competition. Further, because control cannot be exercised, the Commission finds that purchases by CRMC of Utility securities on behalf of the Applicant Funds and by CGII on behalf of its clients will not be attributed to each other.

1. Whether Blanket Authorization Should Be Granted Under Section 203(a)(2)

14. Section 203(a)(2) requires prior Commission authorization for holding companies to acquire certain securities with values in excess of $10 million of transmitting utilities, electric utility companies or holding companies containing such entities.

a. Application

15. Applicants seek blanket authorization under section 203(a)(2) to permit CRMC to acquire Utility securities on behalf of the Applicant Funds, subject to certain conditions set forth in the Application. Applicants assert that such blanket authorization is appropriate because: (a) Applicants cannot exercise control over utilities; and (b) securities acquisitions by CRMC and CGII should not be attributed to each other for section 203(a)(2) purposes.

i. Whether Applicants Can Exercise Control Over Utilities

16. Applicants argue that Commission precedent establishes that "[w]here a class of transactions is subject to conditions that prevent the exercise of … control [over Utilities]

[14] *See* discussion *infra* section IV.A.1.a.i.

… it follows that the Commission should be willing to grant blanket authorizations under section 203."[15] Applicants argue that, under the conditions set forth in the Application, CRMC and the Applicant Funds will be unable to manage, direct, or control any Utility operations, and therefore Applicants will be unable to exert any control over Utilities for which they acquire voting securities.

17. First, Applicants state that each Applicant Fund is prohibited from exercising control over the entities whose securities it acquires because each Applicant Fund is subject to restrictions in its governing documents that prevent it from investing for control. Moreover, Applicants state that compliance with this prohibition is verified and enforced by the SEC. Applicants maintain that CRMC and the domestic Mutual Funds are subject to periodic comprehensive books and records examinations by the SEC under the Investment Advisers Act of 1940 (Advisers Act)[16] and the Investment Company Act of 1940 (1940 Act).[17] Applicants also maintain that the four non-U.S. Mutual Funds are subject to enforcement mechanisms in Canada and Luxembourg, their countries of domicile, and that the prohibition on investing for control in those countries is statutory.

18. Second, Applicants state that the domestic Applicant Funds are independent of CRMC and have ultimate control over their own assets, and therefore, that ownership of Utility securities by the domestic Applicant Funds should not be ascribed to CRMC for purposes of section 203. CRMC notes that each domestic Mutual Fund is a "registered investment company" under the 1940 Act, and therefore, a majority of its board members or trustees are required to be independent of CRMC. Applicants argue that the fact that the Board of Directors of each domestic Mutual Fund can terminate CRMC's tenure as investment manager under the 1940 Act indicates the independence of the domestic Mutual Funds from CRMC. Applicants state that the foreign Mutual Funds (all of which are Applicant Funds) are separate, stand-alone legal entities, but do not have the same degree of independence from CRMC as do the domestic Mutual Funds because they do not have majority control by independent directors.

19. Third, Applicants state that, as Schedule 13G filers, CRMC and the Applicant Funds are prohibited from exercising control over companies whose securities are acquired. An institutional acquirer such as CRMC is not eligible to file a Schedule 13G unless it certifies that the securities have been acquired "in the ordinary course of … [its]

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[15] Amended Application at 15.

[16] 15 U.S.C. § 80b-1 *et seq.* (2000).

[17] 15 U.S.C. § 80a-1 *et seq.* (2000).

business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect …"[18] Applicants argue that the situation of an investor that has filed a Schedule 13G with respect to a securities holding in a Utility is analogous to that of a limited partner or other passive investor; they point out that the Commission has generally disclaimed any jurisdiction over such passive investors. Applicants propose that the Commission condition the grant of any blanket authorization on Applicants maintaining their status as entities eligible to file Schedule 13G.

20. Fourth, Applicants state that the conditions they propose would further prevent the exercise of control over Utilities. Only securities of publicly-traded Utilities are to be acquired, and this will ensure that "authorized acquisitions will be driven by public market considerations rather than a privately held Utility's ownership of particular physical assets."[19] Applicants also note that all acquisitions of utility securities made by CRMC shall be made in a fiduciary capacity on behalf of the Applicant Funds, not on its own behalf. Applicants state that no individual Applicant Fund will own 10 percent or more of the outstanding voting securities of any one Utility. Applicants also promise that the Applicant Funds will not collectively own (and therefore CRMC shall not beneficially own for 1934 Act purposes) more than 20 percent of the outstanding voting securities of any one Utility. The Applicant Funds will maintain all of their existing policies (and comply with applicable statutory prohibitions) against acquiring or exercising control over companies whose securities they acquire. They will not seek to change those policies or statutes. Applicants assert that, with respect to all beneficial ownership of Utility voting securities in reportable amounts under Section 13 of the 1934 Act (i.e., more than five percent of any class of equity security), CRMC and the Applicant Funds shall make all required reports under Schedule 13G and shall maintain their eligibility to file Schedule 13G with respect to all such holdings. Applicants further assert that CRMC and other CRMC Companies shall maintain their functional separation from CGC and the CGII Companies so that they will continue to be treated as non-affiliates under the 1934 Act. Moreover, Applicants state that, although no authorizations are requested for CGII Companies, CGII and the CGII Companies will maintain their status as Schedule 13G filers with respect to any reportable Utility holdings. Finally, Applicants state that when CRMC or an Applicant Fund files a Schedule 13G with the SEC in connection with the acquisition of Utility securities, it will file a copy of such schedule with the Commission.

[18] Amended Application at 18 (citing 17 C.F.R. § 240.13d-1(b)(1)(i) (2006)).

[19] *Id.* at 22.

ii. Whether Securities Acquisitions By CRMC and CGII Should Be Attributed To Each Other For FPA Section 203(a)(2) Purposes

21. Applicants do not seek authorization under section 203(a)(2) for CGII to acquire and vote Utility securities. However, they request a declaration that acquisitions of Utility securities by CRMC and by CGII will not be attributed to each other for purposes of section 203(a)(2). Applicants argue that because CRMC and CGII have functionally separated their operations, they should be treated as non-affiliates for purposes of determining whether CRMC can exercise control over Utilities.[20]

22. Applicants state that CRMC and CGII each conduct their investment, trading, and proxy voting activities independently of one another and of their parent company, CGC. Applicants state that "[t]his separation of activities was accomplished pursuant to guidelines issued by the SEC regarding the disaggregation of interests held by affiliates engaging in unrelated investment activity."[21]

23. Applicants state that, in accordance with SEC guidelines and informal consultation with SEC staff, CRMC and CGII have separated their investment operations and satisfy Schedule 13G filing requirements as separate entities.[22] Applicants describe the steps that CRMC and CGII have taken to ensure that they (and their respective subsidiaries) conduct their investment, trading, and proxy voting activities independently of the other. These include: separate trading desks, separate proxy voting committees, separate investment committees, and separate investment decisions. In accordance with SEC policy, CRMC and CGII obtain an annual independent assessment of the operation of the policies and procedures they established to prevent the flow of information between them.

24. Applicants state that, as a result of the organizational separation of CRMC and CGII, CRMC and CGII are deemed to separately hold the securities of their respective investment advisory clients. Applicants note that, under the 1934 Act, for Schedule 13 reporting purposes, CRMC is considered a beneficial owner of the securities owned by its

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[20] If CRMC and CGII are treated as affiliates, the securities acquisitions by the two companies would be attributed to one another for section 203(a)(2) purposes, and therefore, the proposed ceilings on security ownership would be reached more quickly.

[21] Amended Application at 7.

[22] *Id.* at 8.

mutual funds, and CGII is considered a beneficial owner of the securities held in its client accounts. This is because they each have investment discretion and, in some cases, voting discretion, over purchased entities. Applicants state that, as permitted by the rules governing Schedule 13, CRMC and CGII have filed with the SEC disclaimers clarifying that they are not actual beneficial owners of such securities.[23]

25. Applicants also argue that the Commission's recent decision in *The Goldman Sachs Group, Inc.*[24] stands for the proposition that, under section 203(a)(2), "subsidiaries that are not themselves holding companies [need not] seek prior authorization from the Commission to purchase, acquire or take covered securities" and "do not require the acquisition of securities by a holding company subsidiary to be attributed to an upstream holding company."[25] Applicants maintain that if CRMC and CGII are or become "holding companies," their functional separation means that that their acquisitions of securities should be considered independently of each other, and should not be attributed up the corporate chain to CGC or each other for purposes of section 203(a)(2).

b. Commission Determination

26. The Application is a result of the change in law governing investment in Utility securities brought about by EPAct 2005's repeal of the Public Utility Holding Company Act of 1935 (PUHCA 1935)[26] and simultaneous enactment of modifications to section 203 of the FPA. Under PUHCA 1935, an entity could acquire less than 10 percent of the voting securities of a single utility, but an entity that owned five percent or more of a utility and intended to acquire five percent or more of another utility was required to obtain prior authorization from the SEC. Further, PUHCA 1935 placed limitations on direct and indirect holdings of utility securities within a group of associated companies, potentially resulting in the aggregation of holdings and the attribution of the total to one member of a corporate family. This aggregation and attribution could result in one member of the corporate family being deemed to be a public utility holding company if the amount held reached 10 percent of the outstanding shares. Therefore, under PUHCA

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[23] *See* 17 C.F.R. §§ 240.13d-3 to -4 (2006).

[24] *The Goldman Sachs Group, Inc.* 114 FERC ¶ 61,118, *order denying rehearing*, 115 FERC ¶ 61,303 (2006) (*Goldman Sachs*).

[25] Amended Application at 20 (citing *Goldman Sachs*, 114 FERC ¶ 61,118, at P 13, 14).

[26] 15 U.S.C. § 79a *et seq.* (2000).

1935, if CRMC had acquired, on behalf of the mutual funds it administers, sufficient securities of a public utility to cross the statutory thresholds, it would have come under scrutiny at the SEC as a significant holder of such securities. CRMC would have been deemed to be a public utility holding company, required to register with the SEC and, unless it could qualify for one of the exemptions under PUHCA 1935, it would be required to divest a certain amount of the securities.

27. However, with the repeal of PUHCA 1935, the regulatory environment in which entities such as CRMC can invest in Utility securities has changed, and no longer effectively prohibits such an entity from taking substantial positions in the stock of a particular public utility. Applicants state that "[n]ow that restrictions under PUHCA [1935] have been removed, CRMC seeks blanket authorizations under section 203 of the FPA in order to pursue attractive investment opportunities on behalf of the Applicant Funds and deploy more investment capital in the utility industry."[27] Applicants maintain that a requirement for CRMC to seek transaction-specific section 203 approval before investing would make those investments impractical, and that, therefore, blanket authorizations are needed.

28. The Commission agrees. CRMC seeks blanket authorization to make greater investments in public utilities in order to pursue changing investment strategies and for portfolio diversification purposes. Under any strategy, in order to take full advantage in the market, positions (both acquisitions and dispositions) in equities must be made quickly. CRMC's proposal for authorization of up to 20 percent in the aggregate across its funds will foster greater investment in public utility equities. To encourage greater investment in utilities by mutual funds,[28] the Commission believes that a blanket authorization is appropriate, provided that we can perform continuing oversight in accordance with section 203. For the reasons stated below, the Commission grants in part and denies in part the request for blanket authorizations under section 203(a)(2).

i. Whether Applicants Can Exercise Control Over Utilities

29. The Commission grants Applicants' request for blanket authority under section 203(a)(2), subject to the conditions set forth in the Application. The proposed conditions will ensure that CRMC and the Applicant Funds cannot exercise control over any Utility. In addition, the regulatory and enforcement regime administered by the SEC, as

[27] Amended Application at 10.

[28] *See, e.g.*, Order No. 669 at P 145.

described herein, will complement our own oversight to help ensure that Applicants cannot exercise control over utilities. The Commission has relied previously on the enforcement oversight of a sister federal agency in granting blanket authorizations under section 203 for a utility's acquisition of securities of another public utility.[29]

30. Consistent with their representations, CRMC and the Applicant Funds must file with the Commission contemporaneous with filing at the SEC, in this docket, the Schedule 13G filings made with the SEC that are relevant to the authorizations granted in this order. Any changes in the information provided on the initial Schedule 13G must be reflected in an annual amended filing in this docket, due within 45 days of the end of each calendar year. CRMC has stated that an annual independent assessment is conducted as to the internal controls relating to the establishment and operation of informational barriers[30] between CRMC and CGII that form the basis of CRMC's ability to file Schedule 13G separately from CGII. CRMC shall file annually with the Commission a certification that: (i) an independent annual assessment of such controls has been conducted and that no material deficiencies have been identified with respect to such controls; and (ii) CRMC has not received any comments or deficiency letters from the SEC relating to such controls, other than as have been provided to the Commission. The certification shall be filed within 15 days of receipt of the independent assessment by CRMC. The certification must be verified by a duly authorized corporate official under 18 C.F.R. § 385.2005 (2006) (Subscription and verification). Further, CRMC shall file with the Commission copies of any comment or deficiency letters received from the SEC relating to its status as an entity eligible to file Schedule 13G with the SEC. The comment or deficiency letters shall be filed within 15 days of receipt by CRMC.

ii. Whether Securities Acquisitions by CRMC and CGII Should Be Attributed To Each Other For FPA Section 203(a)(2) Purposes

31. Under the proposed conditions, CRMC and CGII could collectively acquire and vote on behalf of some of the mutual funds they manage, although not hold, more than 20

[29] *UBS AG and Bank of America, N.A.*, 101 FERC ¶ 61,312 (2002), *order on reh'g*, 103 FERC ¶ 61,284, *further order on reh'g*, 105 FERC ¶ 61,078 (2003).

[30] The informational barriers are the policies and procedures established to prevent the flow of information between CRMC and CGII. *See Amendments to Beneficial Ownership Reporting Requirements*, SEC Release No. 34-39538 (Jan. 12, 1998).

percent of the voting securities of any one Utility.[31] In the absence of the measures outlined by Applicants, a change of control of a public utility could be effected through the securities acquisitions by affiliated entities. However, under the regulatory scheme administered by the SEC, the conditions proposed by Applicants, and the Commission's own monitoring, the Commission believes that control cannot be exercised, as discussed above.

32. With adequate conditioning, the Commission has previously granted blanket authorization for future transactions for acquisitions by unnamed or unidentified entities of up to 20 percent of a specifically-identified holding company controlling jurisdictional facilities.[32] The conditions discussed above, which preclude the exercise of control, will also preclude harm to the public interest, particularly competitive harm, that could otherwise result from holding significant equity positions in public utilities or from holding the voting power associated with those positions.

33. Further, we accept that the functional separation of the operations of CRMC and CGII will ensure independent decisionmaking on the Utility securities acquired and disposed by CRMC and CGII. The policies and procedures that underlie the functional separation are independently assessed annually. Investment decisions by the two are made by separate committees. The same is true for the proxy voting decisions. Research is not shared on a current basis and the trading desks are kept separate. Therefore, in light of these factors and CRMC's inability to exercise control of public utilities as described above, we will not attribute the securities acquisitions of CGII to CRMC (or

[31] Applicants rely on the Commission's recent decision in *Goldman Sachs*. However, that case is not directly relevant to the present circumstances. In *Goldman Sachs*, the Commission decided not to attribute the securities acquisitions of certain subsidiaries upstream to their parent company under section 203(a)(2). The Commission explained that it interpreted 203(a)(2) as applying to direct acquisitions by holding companies, not to indirect acquisitions such as acquisitions by non-utility subsidiaries that are not themselves holding companies and, therefore, that it would not attribute such acquisitions to the parent holding company so as to require prior authorization from the Commission. The Commission noted however that the public utility must obtain approval under section 203(a)(1) if the transaction results in a change of control of the public utility. Also, the authorization granted in *Goldman Sachs* was for a period of one year because the Commission was in the early stages of implementing the EPAct 2005 and it was simply preserving the status quo of Goldman's activities permitted by the SEC. *Goldman Sachs*, 114 FERC ¶ 61,118, at P 13-15, 27.

[32] *La Paloma Holding Company, LLC*, 112 FERC ¶ 61,052 (2005).

vice versa) for purposes of determining whether the limitation of 20 percent (under which the blanket authorization would be granted) is met.

2. Whether Blanket Authorization Should Be Granted Under FPA Section 203(a)(1)

34. Under section 203(a)(1), a public utility must obtain Commission authorization before: (A) selling, leasing, or otherwise disposing of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10 million; (B) merging or consolidating, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever; (C) purchasing, acquiring, or taking any security with a value in excess of $10 million of any other public utility; or (D) purchasing, leasing, or otherwise acquiring an existing generation facility: (i) that has a value in excess of $10 million; and (ii) that is used for interstate wholesale sales and over which the Commission has jurisdiction for ratemaking purposes.[33]

a. Application

35. Applicants argue that, under the conditions set forth in the Application, CRMC and the Applicant Funds will be unable to exercise control over Utilities. Accordingly, Applicants seek blanket authorizations under section 203(a)(1) to permit CRMC to acquire Utility securities on behalf of the Applicant Funds and to permit any Utilities and third parties holding securities of Utilities to sell voting securities to CRMC acting on behalf of the Applicant Funds, subject to the conditions set forth in the Application.

b. Commission Determination

36. Section 203(a)(1) requires a public utility to obtain prior authorization for a disposition of its jurisdictional facilities effected through a direct sale of its assets or a change in control over jurisdictional facilities resulting from a disposition or acquisition of securities. Essentially, Applicants request blanket authority under section 203(a)(1) on behalf of unknown public utilities for CRMC's securities acquisitions, to the extent that

[33] 16 U.S.C. § 824b (2000), as amended by EPAct 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005).

such acquisitions could be deemed to accomplish a disposition of jurisdictional facilities.[34]

37. The Commission grants Applicants' request for blanket authority under section 203(a)(1) to permit any Utilities or holders of Utility voting securities to sell such securities to CRMC acting on behalf of the Applicant Funds, subject to the conditions set forth in the Application without the need for Utilities to file with the Commission under section 203(a)(1). Applicants have demonstrated that any Utility securities held by CRMC or an Applicant Fund would be held for investment, not control, purposes.

B. Effect on Rates

38. Applicants argue that the proposed transactions will have no adverse effect on rates. Because Applicants will not acquire control over any utility, they will play no role in setting rates. Further, Applicants argue that because the security acquisitions under the proposed transaction will be made in public markets, there can be no effect on the cost structures of the issuer that might affect cost-based rates.

39. As noted in the Commission's *Merger Policy Statement*,[35] the Commission primarily examines a transaction's effect on rates in order to protect wholesale power and transmission service customers. Nothing in the Application indicates that rates to customers will increase as a result of the proposed transactions. For this reason, the proposed transactions at issue here will have no adverse effect on rates.

C. Effect on Regulation

40. Applicants state that the proposed transactions will have no adverse effect on regulation because the transactions will not result in any changes in the activities or corporate structure of the utility that might affect its jurisdictional status under either federal or state law. Further, Applicants state that, because of the conditions and

[34] It is not clear that these transactions are jurisdictional under section 203(a)(1), because whether a particular transaction involving the disposition of securities of a particular public utility and their acquisition by a particular mutual fund involves a change of control is a fact-specific analysis. Applicants ask for the blanket authorization under section 203(a)(1) to avoid the need for a prior section 203 filing on behalf of a public utility for those investments where (arguably) a change of control could take place.

[35] *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,126.

limitations in the proposed in the application, there is no reasonable basis for any state agency to have an interest in the proposed transaction.

41. The Commission finds that neither state nor federal regulation would be impaired by the proposed transaction.

D. Cross-subsidization

42. Applicants argue that the proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants will be non-controlling investors with no ability to improperly cause or direct the public utilities in which they have an interest to cross-subsidize their non-utility associates or to pledge or encumber their assets.

43. Applicants confirm that the transaction will not result in: (1) transfers of facilities between a traditional public utility associate company with wholesale or retail customers served under cost-based regulation and an associate company; (2) new issuances of securities by a traditional public utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional public utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.[36]

44. We find that Applicants have provided adequate assurance that the transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

[36] These are the affirmations revised, in part, by Order No. 669-B. Although the Application was filed prior to the effective date of Order No. 669-B, we view the Application as consistent with the requirements set forth therein.

E. Whether the Blanket Authorizations Under FPA Section 203(a)(1) and FPA Section 203(a)(2) Should Be Granted on a Permanent Basis

1. Application

45. Applicants seek permanent blanket authorizations. They state that the blanket authorizations requested herein are more limited than those sought in *Goldman Sachs*,[37] and that therefore, the Commission should grant the blanket authorizations on a permanent basis. Applicants also state that, with the conditions that the Applicant Funds shall not collectively own more than 20 percent of the voting securities of any one Utility and that no one Applicant Fund shall own 10 percent or more of the voting securities of any one Utility, they seek a more limited blanket authorization than that sought in *Goldman Sachs*. Further, Applicants argue that, in contrast to the *Goldman Sachs* petitioners, they have proposed, "in discrete terms subject to monitoring and verification,"[38] safeguards ensuring that control will not be exercised. Finally, Applicants argue that, unlike the petitioners in *Goldman Sachs*, neither CRMC, its affiliates, nor the Applicant Funds own any physical Utility assets or engage in energy trading.

2. Commission Determination

46. The Commission will not grant permanent blanket authorizations at this time because our responsibilities under EPAct 2005 are relatively new and we are just starting to gain experience implementing revised section 203. Nevertheless, given the importance of balancing the need for regulatory oversight with the provision of some business certainty, the Commission grants the requested authorizations, as conditioned, on a temporary basis. The authorization expires three years from the date of this order, without prejudice to requests to extend the authorization.

The Commission orders:

(A) The Commission hereby grants in part and denies in part the request for blanket authorizations, as discussed in the body of the order.

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[37] The Commission limited its authorization under section 203(a)(2) to a one year period with the potential for renewal. *Goldman Sachs*, 114 FERC ¶ 61,118 at P 27.

[38] Amended Application at 25.

(B) The proposed transactions are authorized upon the terms and conditions and for the purposes set forth in the Application, as discussed and modified in the body of this order.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of costs or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall file with the Commission contemporaneous with filing at the SEC the Schedule 13G filings made with the SEC that are relevant to the authorizations granted in this order. Any changes in the information provided on the initial Schedule 13G must be reflected in an annual amended filing due within 45 days of the end of each calendar year. Applicants must make an annual certification regarding the findings of the annual independent assessment conducted by auditors as discussed in the body of this order. Applicants shall file with the Commission any comment or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits conducted by the SEC.

(G) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting the petition.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Attachment

AMCAP Fund, Inc.
American Balanced Fund, Inc.
American High-Income Trust
American Mutual Fund, Inc.
Capital Income Builder, Inc.
Capital World Bond Fund, Inc.
Capital World Growth and Income Fund, Inc.
EuroPacific Growth Fund
Fundamental Investors, Inc.
New Perspective Fund, Inc.
New World Fund, Inc.
SMALLCAP World Fund, Inc.
The Bond Fund of America, Inc.
The Growth Fund of America, Inc.
The Income Fund of America, Inc.
The Investment Company of America
The New Economy Fund
Washington Mutual Investors Fund, Inc.
American Funds Insurance Series
Endowments
Capital International Global Discovery
Capital International Global Equity
Capital International Funds – European Equity Investors
Capital International Funds – U.S. Equity Investors