

**SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IC-25137; 812-11764]

**Salomon Smith Barney Inc., et al.; Notice of Application**

August 24, 2001.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission")**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

**SUMMARY OF APPLICATION:** Applicants Salmon Smith Barney Inc. (the "Sponsor"), The Country Fund Opportunity Trust (the "CountryFund Trust") and unit investment trusts ("UITs") organized in the future and sponsored by the Sponsor (together with the CountryFund Trust, the "Trusts," and series of the Trusts, "Trust Series") request an order (a) under section 12(d)(1)(J) of the Act to permit Trust Series to offer and sell to the public units ("Units") with a sales load that exceeds the limit in section 12(d)(1)(F)(ii) of the Act; (b) under sections 6(c) and 17(b) from section 17(a) of the Act to permit the Trust Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act from sections 14(a) and 19(b) of the Act to permit Units to be publicly offered without requiring the Sponsor to take for its own account or place with others \$100,000 worth of Units, and to permit the Trusts to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

**FILING DATES:** The application was filed on August 27, 1999 and amended on August 20, 2001.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 18, 2001 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington DC, 20549-

0609; Applicants, c/o Salomon Smith Barney Inc., 7 World Trades Center, 40th Floor, New York, New York 10048.

**FOR FURTHER INFORMATION CONTACT:** Julia Kim Gilmer, Senior Counsel, at (202) 942-0528 or Nadya B. Roytblat, Assistant Director, 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 SEC's Public Reference Branch, 450 Fifth Street, NY., Washington, DC, 20549-0102 (tel. (202) 942-8090).

**Applicant's Representations**

1. The Country Fund is registered under the Act as UIT. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934, is the sponsor for the Trust Series. Each Trust Series will be organized under a trust indenture among the Sponsor, a banking institution or trust company as trust (the "Trustee") and an evaluator. Pursuant to the trust indenture, the Sponsor will deposit into each Trust Series shares of existing registered investment companies ("Funds"), or contracts and monies for the purchase of shares of the Funds. Each of the Funds will be a closed-end investment company, an open-end investment company or a UIT.

2. The purpose of each Trust Series is to provide retail investors an investment with a professionally selected asset allocation model or investment theme based upon the Sponsor's assessment of the overall economic climate and financial markets, and the opportunity for income and/or capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the total population of available Funds within the various market sectors of the Sponsor's asset allocation model or consistent with the enunciated investment theme. Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates ("Affiliated Funds"). Applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor ("Unaffiliated Funds"). Applicants state that the Trusts' investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. The only Funds that will be eligible for inclusion in a Trust Series are either no load Funds or Funds which, although they offer shares with a front-

end sales charge, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Trust Series. Shares of each of the Funds (except closed-end Funds), therefore, will be sold for deposit into any Trust Series at net asset value. Shares of closed-end Funds will be purchased by a Trust Series at market prices. Investors in the Trust Series ("Unitholders") will pay a specified sales load to the Sponsor in connection with the purchase of their Units.

4. No evaluation fee will be charged with respect to determining the value of the Fund's shares that comprise the Trusts' portfolio. The Trustee will receive service fees under a rule 12b-1 plan from the Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Trust Series. The Trustee will reduce its regular fee to a Trust directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trusts. Any fees so rebated will be utilized by the Trusts to absorb other bona fide trust expenses. To the extent that these fees exceed the total Trust expenses, the excess will be distributed along with other income earned by the Trusts.

**Applicants' Legal Analysis***Section 12(d)(1) of the Act*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those 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 the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's total outstanding securities, provided that the acquiring company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. The Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions 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.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to Units of a Trust Series will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F) because the proposed limit would cap the aggregate sales charges of the Units and the Funds. Applicants assert that the NASD's rule more accurately reflect today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to shares of closed-end Funds held by a Trust Series, no front-end sales load, contingent deferred sales charges, rule 12b-1 fees, or other distribution fees or redemption fees will be charged. Applicants state that although the Trust Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds, these commissions will not differ from commissions otherwise incurred in connection with the purchase of sale of comparable portfolio securities.

7. Applicants also agree, as a condition to the requested relief, that no Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

#### *Section 17(a) of the Act*

1. With regard to the Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person that directly or indirectly

owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants submit that the Trust Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of shares of the Affiliated Funds by a Trust Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the SEC may 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. Section 17(b) of the Act provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that shares of Affiliated Funds will be sold to the Trusts at net asset value, or, in the case of closed-end Funds, at market prices. As a result, applicants believe that the proposed terms and conditions of the Trusts' transactions in Affiliated Fund shares, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person involved. Furthermore, applicants believe that the proposed transactions will be consistent with the policies of the Trusts as recited in their registration statements.

#### *Section 14(a) of the Act*

1. Section 14(a) of the Act requires in substance that an investment company have \$100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than \$100,000 of Fund shares in

each Trust Series. Applicants assert, however, that a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units.

2. Rule 14a-3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants submit that the Trusts cannot rely on the rule because Fund shares are not eligible trust securities. Consequently, applicants seek an exemption under section 6(c) from the net worth requirement of section 14(a). Applicants state that the Trusts and the Sponsor will comply in all respects with the requirements of rule 14a-3, except that the Trusts will not restrict their portfolio investments to "eligible trust securities."

#### *Section 19(b) of the Act*

1. Section 19(b) of the Act and rule 19b-1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b-1(c), under certain circumstances, excepts a UIT investing in "eligible trust securities" (as defined in rule 14a-3) from the requirements of rule 19b-1. Because the Trusts do not limit their investments to "eligible trust securities," the Trusts do not qualify for the exemption in paragraph (c) of rule 19b-1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the redemption and sale of Fund shares to be distributed to Unitholders along with the Trusts' regular distributions. Applicants state that, in all other respects, the Trusts will comply with section 19(b) and rule 19b-1. Applicants assert that the abuses that section 19(b) and rule 19b-1 were designed to prevent do not arise with regard to the Trusts. Applicants state that any gains from the redemption or sale of Fund shares would be triggered by the need to meet Trust expenses or by requests to redeem Units, events over which the Sponsor and the Trusts have no control.

#### **Applicants' Conditions**

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

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in

NASD Conduct Rule 2830) charged with respect to Units of a Trust will not exceed limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

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

4. The Trusts and the Sponsor will comply in all respects with the requirements of rule 14a-3, except that the Trusts will not restrict their portfolio investments to "eligible trust securities."

5. No Trust Series will terminate within thirty days of the termination of any other Trust Series that holds shares of one or more common Funds.

6. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b-1 fees.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 01-21888 Filed 8-29-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25136; 812-12270]

### ARK Funds, et al.; Notice of Application

August 24, 2001.

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

**ACTION:** Notice of application for an order under sections 6(c), 12(d)(1)(f), and 17(b) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 12(d)(1)(A) and (B) and 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:** The requested order would permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds.

**Applicants:** The ARK Funds, and each existing and futures registered open-end management investment company for which Allied Investment Advisers ("AIA"), or any existing or future persons controlling, controlled by, or under common control with AIA

(together with AIA, the "Advisers") serves as an investment adviser (collectively, with ARK Funds, the "Investment Companies"), all existing and future series of the Investment Companies (the "Funds"), and the Advisers.

**Filing Dates:** The application was filed on September 25, 2000 and amended on August 23, 2001.

**Hearing or Notification of Hearing:** An order granting the requested relief 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 September 18, 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, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Ark Funds, One Freedom Valley Drive, Oaks, PA, 19456. AIA, 100 E. Pratt Street, Baltimore, MD 21201.

**FOR FURTHER INFORMATION CONTACT:** Julia Kim Gilmer, Senior Counsel, at (202) 942-0528, or Nadya B. Roytblat, Assistant Director, 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 ARK Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company and currently consists of thirty Funds. Nine of the Funds hold themselves out as money market funds and comply with rule 2a-7 under the Act (together with any other funds money market Funds subject to rule 2a-7, "Money Market Funds").<sup>1</sup>

<sup>1</sup> Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any other existing or future registered open-end management investment company that subsequently relies on the order will do so only in accordance with the terms and conditions of the application.

AIA, a Maryland corporation and a wholly-owned subsidiary of Allfirst Bank, is the investment adviser to each portfolio of the Ark Funds and is registered under the Investment Advisers Act of 1940.<sup>2</sup>

2. Each Fund has, or may have, cash held by its custodian ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities, dividend payments, or money received from investors. Certain funds also may participate in a securities lending program under which the Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. 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 relief to permit each Fund to use Cash Balances to purchase shares of one or more Money Market Funds (such Funds, including Money Market Funds that purchase shares of other Money Market Funds, are referred to as "Investing Funds"), and the Money Market Funds to sell their shares to, and redeem their shares from, the Investing Funds. Investment of Cash Balances in shares of Money Market Funds will be made only if permitted by the Investment Fund's investment restrictions and to the extent consistent with the investment restrictions and policies set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions will result in ready liquidity, greater returns, increased diversity of holdings and reduce transaction costs, risk of counterparty default, and the market risk associated with direct purchases of short-term obligations.

### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides 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

<sup>2</sup> Applicants also request that the order extend to any entity or entities that result from a reorganization of AIA into another jurisdiction or a change in type of business organization.