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)(J), 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'').[1]

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.[2]

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

[1] 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.

[2] 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.

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 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 authorizes the Commission to exempt any person, security or transaction (or classes thereof) from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption from the provisions of sections 12(d)(1)(A) and (B) to the extent necessary to permit each Investing Fund to invest Cash Balances in the Money Market 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 state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Money Market Fund through threat of redemption. Applicants also represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. (''NASD'') Conduct Rules) or, if such shares are subject to any such fees in the future, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of securities, each Investing Fund will invest only in the class with the lowest expense ration at the time of the investment. Before the next meeting of the Funds' board of trustees (the ''Board'') is held for the purpose of voting on an advisory contract, the Board, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees'') shall consider to what extent, if any, the advisory fees charged to each Investing Fund by the Adviser should be reduced to account for reduced services in a Money Market Fund. Applicants represent that no Money Market Fund whose shares are held by an Investing Fund will acquire securities of an 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, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(30 of the Act defines an ''affiliated person'' of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that the Investing Funds may be deemed to be under common control, and therefore affiliated persons of each other, because the Investing Funds have a common investment adviser or because their investment advisers may be under common control. In addition, applicants submit that the Advisers may hold more than 5% of the outstanding shares of certain Funds and that under these circumstances, the Funds may be deemed to be affiliated persons of one another. Accordingly, applicants state that the sale of Money Market Fund shares to the Investing Funds, and the redemption of such shares, would be prohibited under section 17(a).

5. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policies of each registered investment company involved, and with the general purposes of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person , security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act if, and to the extent that such exemption is necessary or appropriate in the public interest and is consistent with 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 Money Market Fund shares by the Investing Funds satisfies the standards in sections 17(b) and 6(c) of the Act. Applicants note that shares of the Money Market Funds will be purchased and redeemed by the Investing Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder in the same class of the Money Market Fund. The Investing Funds will retain their ability to invest their Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if the Adviser believes that the Investing Funds can obtain a higher rate of return, or for any other reason. Applicants also state that each Money Market Fund will maintain the right to discontinue selling shares to any of the Investing Funds if the Trustees of the Money Market Fund determine that such sales would adversely affect the Money Market Fund's 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, unless the Commission has issued an order authorizing the arrangement. Applicants state that each Investing Fund (by purchasing shares of the Money Market Funds), the Advisers (by managing the assets of the Investing Funds invested in the Money Market Funds), and each Money Market Fund (by selling shares to and redeeming them from the Investing Funds) might be deemed to be participants in a joint enterprise or other joint 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 will 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. Applicant submit that the proposed transactions meet these standards because the investments by the Investing Funds in shares of the Money Market Funds will be on the same basis and will be indistinguishable from any other shareholder account maintained by the same class of the Money Market Funds, and the transactions will be consistent with the Act.

Applicants' Conditions

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

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board is held for the purpose of voting on an advisory contract under section 15 of the Act, the Board, including a majority of the Independent Trustees, taking into account all relevant factors, shall consider to what extent, if any, the advisory fee charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. In connection with this consideration, the Adviser to the Investing Fund 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 Investing Fund that can be expected to be invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the consideration relating to fees referred to above.

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

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

5. Each Investing Fund, each Money Market Fund, and any future Fund that may rely on the order shall be advised by an Adviser.

6. No Money Market Fund, the shares of which are held by an Investing Fund, shall acquire securities of any 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 its Board, including a majority of the Independent Trustees, will approve the Fund's participation in a 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 Money Market Funds is in the best interest of the shareholders of the Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–21889 Filed 8–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44745; File No. SR–DTC–2001–03]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to Making Foreign Securities Eligible for Depository Services

August 24, 2001.

On February 23, 2001, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–2001–03) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 10, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the filing is provide DTC and NSCC participants who are presently using NSCC's clearing services with respect to foreign securities the use, if applicable, of depository services at DTC for these securities. These securities are generally foreign ordinary equities that have been assigned security numbers (CINS) and NASD symbols to automate comparison process. Most trades in foreign ordinary shares that are executed between two U.S. broker-dealers are forwarded to NASD's automated confirmation transaction (ACT) system and are submitted as locked-in trades to NSCC.

Today, through the NSCC's Foreign Securities Comparison and Netting (FSCN) system, foreign securities are compared and netted on a bilateral basis in a standardized and automated fashion processed through NSCC's over-the-counter system. Receive and deliver instructions are automatically generated by NSCC and are distributed to participants on the morning after comparison, which expedites the settlement process for non-U.S. equity transaction. Trades are netted on a participant-to-participant basis reducing the number of deliveries for settlement in the local market. NSCC does not currently and will not under the proposed rule change, guarantee the ultimate settlement of these transactions or the clearance cash adjustment.

Given the increase in activity over the last few years, U.S. broker-dealers have become concerned about the number of potential risk and operational issues the current process creates, such as the lack of straight through processing (''STP'') from the point of trade to settlement. It is DTC's plan to enhance the settlement part of the process and to deliver an automated approach to complete the STP process from trade to settlement. In doing so, many operational issues will be minimized or eliminated.

Today, there is a separation between the physical movement of these securities and the money settlement of the trades (*i.e.,* there is no delivery versus payment (''DVP'') as is true for U.S. trades). The delivery of the securities occurs in the foreign location and then some time later the payment is made in the U.S.

Currently, trades in these foreign securities executed in the U.S. must settle in the local market without the benefit of any DTC's infrasture. Therefore, U.S. based broker-dealer who trade in foreign securities in the U.S. must set up correspondent relationships in the local market. Additionally, each broker-dealers must deal separately with the inherent inefficiencies, such as large time-zone differences, in this structure. Also, the need to set up such correspondent relationships puts smaller broker-dealers at disadvantage because many smaller broker-dealers do not have the resources or trading volumes to justify such relationships and therefore must enlist a large broker-dealer to perform such services for its

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

[2] Securities Exchange Act Release No. 44260 (May 4, 2001), 66 FR 23956.