

Dated at Rockville, Md. this 26th day of February 1998.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

*Project Manager Project Directorate IV-2,
Division of Reactor Projects—III/IV, Office of
Nuclear Reactor Regulation.*

[FR Doc. 98-5529 Filed 3-3-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Committee Meeting; Revised Agenda

The agenda for the 449th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on March 2-4, 1998, in Conference Room T-2B3, 111545 Rockville Pike, Rockville, Maryland, has been revised to discuss proposed NRC Commission definition of several concepts related to risk-informed, performance-based regulation. This discussion is scheduled between 11:15 a.m. and 12:15 p.m. on Tuesday, March 3, 1998.

The agenda for March 2 and 4, 1998 remains the same as published in the **Federal Register** on Friday, February 20, 1998 (63 FR 8696).

Further information regarding this meeting can be obtained by contacting Dr. Medhat El-Zeftawy, Acting Chief, Nuclear Reactors Branch (telephone 301/415-6889), between 7:30 a.m. and 4:15 p.m. EST.

Dated: February 26, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98-5608 Filed 3-3-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No.
23047; 812-10924]

Ark Funds, et al.; Notice of Application

February 26, 1998.

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

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of the Application

Applicants request an order to permit ARK Funds to acquire all of the assets and stated liabilities of all of the series of Marketvest Funds and Marketvest

Funds, Inc., and one series of ARK Funds.

Applicants

ARK Funds, Allied Investment Advisors, Inc. ("Allied"), First National Bank of Maryland ("First National"), Marketvest Funds and Marketvest Funds, Inc. (collectively, "Marketvest Funds"), Dauphin Deposit Bank and Trust Company ("Dauphin"), and First Maryland Bancorp ("First Maryland").

Filing Dates

The application was filed on December 24, 1997. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

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 the 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 March 19, 1998, 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 may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: ARK Funds, One Freedom Valley Drive, Oaks, PA 19456; Allied, 1000 East Pratt Street, Baltimore, MD 21202; First National and First Maryland, 25 South Charles St., Baltimore, MD 21202; Marketvest Funds, Inc. and Marketvest Funds, Federated Investors Tower, Pittsburgh, PA 15222-3779; and Dauphin, 213 Market St., Harrisburg, PA 17101.

FOR FURTHER INFORMATION CONTACT: Annmarie J. Zell, Staff Attorney, (202) 942-0532, or Christine Y. Greenlees, Branch Chief, (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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942-8090).

Applicants' Representations

1. ARK Funds, a Massachusetts business trust, is an open-end management investment company

registered under the Act. ARK Funds currently consists of twenty-two portfolios, including the ARK Stock Portfolio (the "ARK Acquired Fund") and the ARK Pennsylvania Tax-Free Portfolio. ARK Funds is organizing four new portfolios: ARK Short-Term Bond Portfolio, ARK U.S. Government Bond Portfolio, ARK Value Equity Portfolio and ARK International Equity Selection Portfolio (together with the ARK Pennsylvania Tax-Free Portfolio, the "Acquiring Funds").

2. Marketvest Funds, a Massachusetts business trust, and Marketvest Funds, Inc., a Maryland corporation, are open-end management investment companies registered under the Act. Marketvest Funds currently consists of two series: Marketvest Pennsylvania Intermediate Municipal Bond Fund and Marketvest International Equity Fund. Marketvest Funds, Inc. currently consists of three series: Marketvest Short-Term Bond Fund, Marketvest Intermediate U.S. Government Bond Fund and Marketvest Equity Fund (together with Marketvest Pennsylvania Intermediate Municipal Bond Fund and Marketvest International Equity Fund, the "Marketvest Acquired Funds.") The Marketvest Acquired Funds and the ARK Acquired Fund collectively are referred to as the "Acquired Funds."

3. Allied is registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is the investment adviser for the Acquiring Funds and the ARK Acquired Fund. Allied is a wholly-owned subsidiary of First National. First National is a wholly-owned subsidiary of First Maryland, a bank holding company. As of October 31, 1997, First National or its affiliates, all of which are part of a common control group ("First National Group"), held of record 100% of the outstanding shares of the ARK Pennsylvania Tax-Free Portfolio and the Ark Stock Portfolio, and held or shared voting power and/or investment discretion with respect to more than 5% of these shares.

4. Dauphin is the investment adviser of the Marketvest Acquired Funds. Dauphin is a "bank," as defined in section 202(a)(2) of the Advisers Act, and therefore is exempt from registration as an investment adviser under section 202(a)(11)(A) of the Advisers Act. Dauphin is a wholly-owned subsidiary of First Maryland. As of October 31, 1997, Dauphin or its affiliates, all of which are part of a common control group (the "Dauphin Group"), held of record more than 5% of the Marketvest Acquired Funds, and held or shared voting power and/or investment discretion with respect to more than 5% of these shares. In

addition, as of the same date, defined benefit plans of Dauphin or its subsidiaries owned in excess of 5% of the Marketvest Acquired Funds.

5. On November 7, 1997, and November 11, 1997, respectively, the boards of directors and trustees of Marketvest Funds (the "Marketvest Boards") and the board of trustees of ARK Funds (the "ARK Board"), including the disinterested directors and trustees, unanimously approved the proposed reorganization (the "Reorganization") described in an agreement and plan of reorganization (the "Reorganization Agreement").¹ Pursuant to the Reorganization Agreement, each Acquiring Fund will acquire all of the assets and stated liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund based on the Funds' relative net asset values on the closing date (the "Closing Date"). Each Reorganization Agreement further provides that the Acquiring Fund will issue and distribute pro rata to the corresponding Acquired Fund's shareholders of record, determined as of the close of business on the Closing Date, the Acquiring Fund shares issued in exchange for the Acquiring Fund's assets. This distribution will be accomplished by the issuance of the Acquiring Fund shares to open accounts on the share records of the Acquiring Fund in the names of the Acquired Fund shareholders representing the full and fractional number of Acquiring Fund shares due each shareholder pursuant to the Reorganization Agreement. All issued and outstanding shares of the Acquiring Fund will simultaneously be canceled on the books of the Acquired Fund. No additional shares representing interests in the Acquired Fund will be issued, and the Acquired Fund subsequently will be liquidated.

6. The Marketvest Acquired Funds offer one class of shares, which are subject to a front-end sales charge but are not subject to a contingent deferred sales charge. The Marketvest Acquired

Fund shares also are subject to distribution and shareholder servicing fees, which currently are being waived. The Acquiring Funds and the ARK Acquired Fund offer two classes of shares, a Retail Class and an Institutional Class. As of the date of the application, there were no Retail Class shareholders of the ARK Acquired Fund. The Institutional Class shares are subject to neither a sales charge (front-end or deferred) nor rule 12b-1 fees, but the ARK Board has authorized payment by the Institutional Class of shareholder service fees of 0.06%. For the purposes of the Reorganization, the Marketvest Acquired Funds will be reorganized into the Institutional Class of the corresponding Acquiring Funds, and the Institutional Class of the ARK Acquired Fund will be reorganized into the Institutional Class of the Corresponding Acquiring Fund. The Institutional Class shares and the Marketvest Acquired Fund shares have similar rights and obligations as described in the application. No sales load will be imposed with respect to the shares of the Acquiring Funds to be issued in the Reorganization. Following the consummation of the Reorganization, Acquired Fund shareholders will be subject to the shareholder service fees applicable to the Institutional Class shares.

7. The investment advisory fees for the Acquired Funds and Acquiring Funds are payable annually. At the present time, Allied and Dauphin are waiving a portion of their advisory fees. Allied intends to continue to waive a portion of its advisory fees after the Reorganization.

8. The investment objectives of each Acquired Fund and its corresponding Acquiring Fund are similar. The investment restrictions and limitations of each Acquired Fund and corresponding Acquiring Fund are substantially similar, but in some cases involve differences in the general investment strategies utilized by these funds.

9. The Marketvest Boards and the ARK Board (together, the "Boards"), including in both cases the disinterested directors and trustees, found that participation in the Reorganization is in the best interest of each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization.

10. In approving the Reorganization, the Boards considered: (a) the terms and conditions of the Reorganization Agreement, including that (i) the exchange of Acquired Fund shares for Acquiring Fund shares will take place on a net asset value basis, (ii) no sales

charge will be incurred by Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares, and (iii) First Maryland will pay any unamortized organizational expenses on the books of the Acquired Fund; (b) the tax-free status of the Reorganization; (c) the advantages which may be realized by the Acquired Funds and Acquiring Funds, including economies of scale; (d) the agreement of First Maryland to bear the costs associated with the Reorganization; and (e) the fact that the advisory fee would be substantially similar for the Acquired Fund shareholders becoming shareholders of the corresponding Acquiring Funds. In addition, the Marketvest Boards reviewed a number of factors, including the investment objectives, policies and restrictions of the Acquiring Funds and their relative compatibility with those of the corresponding Marketvest Acquired Funds, and the shareholder services and other fees applicable to the Institutional Class of the Acquiring Funds as compared to those applicable to the Marketvest Acquired Funds. The Boards also considered the potential benefits to First Maryland and its affiliates which could result from the Reorganization and concluded that, despite these potential benefits, various factors, including those noted in (a) through (e) above, render the Reorganization fair and in the best interests of the shareholders of the Acquired Funds and the Acquiring Funds.

11. The expenses incurred in connection with the Reorganization, which First Maryland will bear, are expected to include professional fees and the cost of printing and mailing the prospectus/proxy statements, soliciting proxies and holding the required shareholder meetings.

12. Registration statements on Form N-14 were filed with the SEC with respect to the Marketvest Acquired Funds and the ARK Acquired Fund on February 13, 1998 and February 23, 1998, respectively. Applicants sent a prospectus/proxy statement to shareholders of each Marketvest Acquired Fund on February 20, 1998 for their approval at a meeting of shareholders scheduled for March 19, 1998. Applicants expect to send a prospectus/proxy statement to shareholders of the ARK Acquired Fund approximately 30 days before the shareholders meeting, which is currently scheduled for April 23, 1998.

13. The Reorganization Agreement between Marketvest Funds and the ARK Funds may be terminated by the mutual written consent of the Marketvest Board and the ARK Board at any time prior to

¹ Acquired Funds and the corresponding Acquiring Funds are:

(i) Marketvest Short-Term Bond Fund and ARK Short-Term Bond Fund,

(ii) Marketvest Intermediate U.S. Government Bond Fund and ARK U.S. Government Bond Portfolio,

(iii) Marketvest Equity Fund and ARK Value Equity Portfolio,

(iv) Marketvest Pennsylvania Intermediate Municipal Bond Fund and ARK Pennsylvania Tax-Free Portfolio,

(v) Marketvest International Equity Fund and ARK International Equity Selection Portfolio, and

(vi) ARK Stock Portfolio and ARK Value Equity Portfolio.

the Closing Date or by either party at any time after June 30, 1998, if the closing has not occurred prior to that date. The Reorganization Agreement relating to the ARK Acquired Fund may be terminated and abandoned by the ARK Board at any time prior to the Closing Date.

14. The consummation of the Reorganization will be subject to the following conditions set forth in the Reorganization Agreement: (a) the shareholders of each Acquired Fund will have approved the Reorganization Agreement; (b) applicants will have received the exemptive relief which is the subject of the application; (c) an opinion of counsel with respect to the federal income tax aspects of the Reorganization will have been received; and (d) each Acquired Fund will have declared and paid a dividend or dividends on the shares of the Acquired Fund which, together with all previous dividends, will have the effect of distributing to the shareholders of the Acquired Fund all of the Acquired Fund's investment company taxable income and tax-exempt interest income for the final taxable period and all of its net capital gains realized in the final taxable period. Applicants agree not to make any material changes to the Reorganization Agreement that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that owns 5% or more of the outstanding voting securities of such 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 such other person, (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if such other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain

conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 because the Funds may be affiliated for reasons other than those set forth in the rule. The ARK Acquired Fund and the ARK Value Equity Portfolio (the Fund into which the ARK Acquired Fund is merging) have a common investment adviser, Allied. Allied is a wholly-owned subsidiary of First National. First National Group holds of record more than 5% of the outstanding voting securities of the ARK Acquired Fund and the ARK Pennsylvania Tax-Free Portfolio and holds or shares voting and/or investment discretion with respect to more than 5% of such outstanding voting securities. Because of this ownership, the ARK Acquired Fund and the ARK Pennsylvania Tax-Free Portfolio might be deemed to be an "affiliated person" of First National under section 2(a)(3)(B) of the Act. Therefore, the Reorganization of the ARK Acquired Fund and the ARK Value Equity Portfolio may not meet the "solely by reason of" requirement of rule 17a-8.

4. The Dauphin Group holds of record more than 5% of the outstanding voting securities of the Marketvest Acquired Funds and holds or shares voting and/or investment discretion with respect to more than 5% of their outstanding voting securities. First National and Dauphin are under common ownership and control by First Maryland. By virtue of this ownership, an Acquiring Fund may be deemed to be an "affiliated person of an affiliated person" of a Marketvest Acquired Fund. Thus, the applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the proposed Reorganization.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b). Applicants note that the Boards, including the disinterested directors and trustees, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will

not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Funds' shares for the Acquiring Funds' relative net asset values.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-5549 Filed 3-3-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26832; 70-9069]

Conectiv, Inc.; Order Authorizing Acquisition of Public Utility Companies and Related Transactions; Approving Organization of Service Company Subsidiary; Authorizing Certain Affiliate Transactions; Approving Service Agreements; and Reserving Jurisdiction

February 25, 1998.

Conectiv, Inc. ("Conectiv"), a Delaware corporation not currently subject to the Public Utility Holding Company Act of 1935, as amended ("Act"), has filed an application-declaration, as amended, under sections 6(a), 7, 9, 10, 11 and 13 of the Act, and rules 80 through 91, 93 and 94, seeking approvals related to the proposed combination of Delmarva Power & Light Company ("Delmarva"), a Delaware and Virginia public utility company, and Atlantic Energy, Inc. ("Atlantic"), a New Jersey public utility holding company exempt by order under section 3(a)(1) from all provisions of the Act, except section 9(a)(2). Conectiv requests, among other things, an order under sections 9(a)(2) and 10 of the Act authorizing its acquisition of all of the issued and outstanding common stock of Delmarva and Atlantic by means of the mergers described below. Following the transactions, Conectiv will register as a holding company under section 5 of the Act.¹

The Commission issued a notice of the filing on October 3, 1997 (Holding Co. Act Release No. 26763). The Commission received a request for a hearing dated October 27, 1997, from South Jersey Gas Company ("South Jersey"), a New Jersey public utility company engaged in the transmission, distribution, transportation and sale of natural and mixed gases in New Jersey.

¹ Conectiv will file a notification of registration on Form U5A within 30 days of the merger and will file a registration statement on Form U5B within 90 days.