

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25462; 812-12312]

### Financial Investors Trust, et al.; Notice of Application

March 13, 2002.

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

**ACTION:** Notice of an 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 an exemption 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 OF APPLICATION:** The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

*Applicants:* Armada Funds ("Armada"), The Armada Advantage Fund ("Armada Advantage"), Financial Investors Trust on behalf of The United Association S&P 500 Index Fund ("United Association", and together with Armada and Armada Advantage, the "Trusts") and any registered open-end management investment company or series thereof that is currently, or in the future advised by National City Investment Management Company ("IMC") or any entity controlling, controlled by, or under common control with IMC (together with IMC, the "Adviser")(collectively, the Trusts and their series, such investment companies and their series, the "Funds.")

*Filing Dates:* The application was filed on October 20, 2000, and amended on March 4, 2002.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving 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 April 8, 2002, and should be accompanied by proof of

service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609; Applicants, Armada, One Freedom Valley Drive, Oaks, PA 19456; Armada Advantage, One Freedom Valley Drive, Oaks, PA 19456; United Association S&P 500 Index Fund, PMB 606, 303 16th Street, Suite #016, Denver, CO 80202-5657; IMC, 1900 East Ninth Street, Cleveland, OH 44114.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 or Nadya 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 (telephone (202) 942-8090).

#### Applicants' Representations

1. Armada and Armada Advantage are Massachusetts business trusts registered under the Act as open-end management investment companies. Financial Investors Trusts is a Delaware business trust registered under the Act as an open-end management investment company. Collectively, the Trusts consist of 36 Funds.<sup>1</sup> The Funds, other than the money market Funds ("Money Market Funds"), invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. The Money Market Funds comply with rule 2a-7 under the Act. The Adviser is a wholly-owned subsidiary of National City Corporation, a publicly-held bank holding company, and is registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. Applicants state that certain Funds ("Investing Funds") have, or may be expected to have, uninvested cash ("Uninvested Cash") held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities

<sup>1</sup> Each Fund that currently intends to rely on the order has been named as an applicant. Another Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. The Investing Funds also may participate in a securities lending program under which a 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 an order to permit each of the Investing Funds to invest its Cash Balances in one or more of the Money Market Funds, and to permit each of the Money Market Funds to sell its shares to, and redeem its shares from, the Investing Funds, and the Adviser to effect such purchases and sales. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Investing Fund's investment objectives, restrictions, and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

#### Applicants' Legal Analysis

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

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent

that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of section 12(d)(1)(A) and (B) to permit the Investing Funds 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 would not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investment 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 Dealer's ("NASD") Conduct Rules) or if such shares are subject to any such sales load, redemption fees, distribution fee or service 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. Applicants state that if a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of the investment. In connection with approving any advisory contract for an Investing Fund, the Investing Fund's board of trustees (the "Board") including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), will consider to what extent, if any, the advisory fees 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 the investment of Uninvested Cash in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act, in pertinent part, defines an "affiliated person" of an investment company to include any person directly or indirectly controlling, controlled by, or under common control

with the other person and any person owning, controlling, or holding with power to vote 5% or more of the other person. Applicants state that because the Funds share a common Adviser, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. In addition, applicants state that because an Investing Fund may acquire 5% or more of a Money Market Fund, the Investing Fund may be deemed to be an affiliated person of the Money Market Fund. As a result, section 17(a) would prohibit the sale of shares of a Money Market Fund to the Investing Funds, and the redemption of shares by the Money Market Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b). 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. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as a principal, from participating in or effecting any transaction in connection

with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Fund, by participating in the proposed transactions, and the Adviser, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

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

#### Applicants' Conditions

Applicants 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 under a plan adopted in accordance with rule 12b-1 under the Act or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the NASD) or if such shares are subject to any such sales load, redemption fee, distribution fee or service 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 of an Investing Fund is held for purposes of voting on an advisory contract under section 15 of the Act, 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. Before approving any advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the

advisory fees 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. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

3. Each of the Investing Funds 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 and series thereof will be treated as a separate investment company.

4. Investment 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 and Money Market Fund that may rely on the requested order shall be advised by the Adviser.

6. So long as its shares are held by an Investing Fund no Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the securities lending program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Fund's participation in the securities lending program. The Board 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.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45548; File No. SR-GSCC-2002-02]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Alter Trade Data Submission Requirements for Netting and Comparison-Only Members

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 11, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is proposing to amend its rules to alter trade data submission requirements for Netting and Comparison-Only members.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its rules to alter trade data submission requirements for both Netting<sup>3</sup> and

Comparison-Only<sup>4</sup> members. Based on an analysis conducted by GSCC to discover the cause of lower-than-desired buy/sell comparison rates, GSCC has determined that changes to its trade submission requirements would boost GSCC's trade comparison rates and thereby should decrease risk exposure for members and should allow market participants to more effectively settle non-netting eligible trades outside GSCC.<sup>5</sup>

In the course of its analysis, GSCC discovered that while comparison rates for repo transactions approached 97 percent, comparison rates for buy/sell transactions were consistently lower at 95 percent. GSCC determined that there were four main reasons for this trend. First, many trades submitted to GSCC are not submitted as originally executed between members. Many trades are either "bunched" or "broken down" resulting in some trades not being compared.<sup>6</sup> While GSCC employs certain tolerances for required data fields in order to aid comparison, these trade scenarios fall outside of GSCC's par summarization tolerances.<sup>7</sup>

The second reason for uncomparing trades is when GSCC members fail to notify GSCC of their intent to submit trades for Executing Firms.<sup>8</sup> GSCC keeps over 400 Executing Firms and their

including a repo transaction, to ensure that the details of such trade are in agreement between the parties. Trade detail comparison is the first step in the clearance and settlement process for securities transactions. The Netting System is a system for aggregating and matching offsetting obligations resulting from trades, including repo transactions, submitted by or on behalf of netting members.

<sup>4</sup> A Comparison-Only Member is a member of GSCC that is a member only of the Comparison System.

<sup>5</sup> Comparison rates are derived by dividing the total number of buy/sell trades compared by the total number of buy/sell trades submitted.

<sup>6</sup> For example, Firm A submits one trade for \$30 million, and Firm B "breaks down" the trade into three \$10 million pieces. Alternatively, Firm A and Firm B may execute five separate trades each worth \$10 million. Firm A submits each trade separately while Firm B "bunches" the five trades into one \$50 million piece. In both of these examples, the trades will not be compared.

<sup>7</sup> GSCC, in the event of a mismatch of final money, has established trade tolerances which allow for differentials in trade values (or par summarization) submitted by members on each side of one transaction. For a trade to be compared, par summarization must be on a 2:1 or 2:2 ratio. For example, where Firm A submits a trade in one piece of \$50 million, and Firm B submits two pieces of \$25 million each, this transaction would fall within the 2:1 par summarization tolerance. If Firm A were to submit two pieces of \$25 million and Firm B submitted two pieces of \$20 million and \$30 million, this would fall within GSCC's 2:2 par summarization tolerance. Assuming that the final money matches, both of these trades will be compared by GSCC.

<sup>8</sup> An Executing Firm is a firm that is not a member of GSCC whose trade data is submitted to GSCC by a GSCC member.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by GSCC.

<sup>3</sup> A Netting member is a member of GSCC that is a member of both the Comparison System and the Netting System. The Comparison System performs trade comparison which consists of the reporting, validating, and in some cases, matching by GSCC of the long and short sides of a securities trade,