

same for all purchases and redemptions, and Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person of a New Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the New Fund.

Applicants' Conditions

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

1. Applicants will not register a Future Fund by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission or (b) the Future Fund will be listed on a national securities exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each New Fund's prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the New Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as each New Fund operates in reliance on the requested order, the Shares of such New Fund will be listed on a national securities exchange.

4. Neither the Trust nor any New Fund will be advertised or marketed as an open-end fund or mutual fund. Each new New Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the New Fund and tender those shares for redemption to the New Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the New Fund and tender those Shares for redemption to the New Fund in Creation Units only.

5. The web site for the Trust, which will be publicly accessible at no charge, will contain the following information

on a per Share basis, for each New Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

6. The prospectus and annual report for each Fund Fund will also include: (a) The information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or for the life of the New Fund), (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the element Subject Index.

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. 25077; 812-12548]

Professionally Managed Portfolios, et al.; Notice of Application

July 24, 2001.

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

ACTION: Notice of an application for an exemption under section 6(c) of the Investment.

Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without prior shareholder approval, of a new investment advisory agreement ("New Advisory Agreement") for a period beginning on June 17, 2001, and ending on the earlier of (a) the date the New Advisory Agreement is approved or disapproved by the shareholders, or October 17, 2001 (the "Interim Period").

APPLICANTS: Professionally Managed Portfolios (the "Trust"), and Turner Investment Partners, Inc. ("Turner").

FILING DATES: The application was filed on June 13, 2001 and amended on July 2, 2001 and July 23, 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 August 17, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. The Trust, 915 Broadway, New York, NY 10010. Turner, 1235 Westlakes Drive, Suite 350, Berwyn, PA 19312.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942-0582, or Mary Kay Frech, Branch Chief, 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, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered as an open-end management investment company under the Act. Titan Financial Services Fund (the "Fund") is a series of the Trust. Titan Investment Advisers, L.L.C. (the "Adviser") is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). Prior to January 17, 2001, the Adviser managed the assets of the Fund pursuant to an investment advisory agreement (the "Former Advisory Agreement"). Mr. Gilbert R. Giordano, President and majority stockholder of the Adviser, had primary responsibility for the management of the Fund.

2. On January 17, 2001, Mr. Giordano died unexpectedly, resulting in an assignment of the Former Advisory Agreement. On January 25, 2001, the Trust's board of trustees ("Board") approved a new investment advisory agreement with the Adviser (the "Interim Advisory Agreement") and

appointed a subadviser, Harris Bretall Sullivan & Smith L.L.C. (the "Subadviser") in reliance on rule 15a-4(b)(1) under the Act for an interim period that ended on June 16, 2001. Under its agreement with the Trust (the "Subadvisory Agreement"), the Subadviser managed the investments of the Fund subject to the Adviser's supervision and was paid by the Adviser out of the fee the Adviser received from the Fund. The Fund informed its shareholders of these events in a supplement to the Fund's prospectus dated January 31, 2001. The supplement to the prospectus stated that a special meeting of shareholders would be scheduled to vote on the Interim Advisory Agreement and the Subadvisory Agreement.

3. During the weeks following the appointment of the Subadviser, the Adviser and the Board considered what alternative arrangements regarding the management of the Fund might provide the greatest benefits to the Fund's shareholders. The Adviser and the Board considered a number of options, including continuing the interim arrangement with the Adviser and Subadviser on a permanent basis, retaining a new subadviser for the Fund, and replacing both the Adviser and Subadviser with a new investment adviser.

4. During March 2001, the Adviser initiated talks with Turner, an investment adviser registered under the Advisers Act, about taking over the management of the Fund as subadviser in place of the Subadviser. Over the course of the following weeks, these discussions led the Adviser and Turner to consider other arrangements. In mid-May, the Adviser and Turner agreed in principle to present certain proposals to the Board. These proposals were that Turner be appointed as investment adviser to the Fund in place of both the Adviser and Subadviser, and that the Fund be combined with an open-end management investment company registered under the Act for which Turner serves as investment adviser, the Turner Future Financial Services Fund (the "Turner Fund"), in a tax-free reorganization (the "Transaction"). In addition, Turner agreed to acquire the Adviser by buying 100% of its outstanding membership interests, with the payment to the Adviser's owners contingent on shareholder approval of the New Advisory Agreement and the Transaction. The Adviser and Turner entered into an agreement on the acquisition of the Adviser on June 7, 2001.

5. The Interim Advisory Agreement and the Subadvisory Agreement expired

on June 16, 2001. The Board, including all of the trustees who are not "interested persons" of the Trust within the meaning of section 2(a)(19) of the Act (the "independent trustees"), appointed Turner to act as investment adviser to the Fund at a telephonic meeting on June 13, 2001, effective June 17, 2001. On June 20, 2001, the Board met in person and approved the New Advisory Agreement and submission of the New Advisory Agreement to the shareholders of the Fund for their approval. Turner will not be compensated for the services it provided to the Fund prior to the Board's approval of the new Advisory Agreement at the in person meeting. Settlement of the acquisition of the Adviser by Turner occurred on June 29, 2001. On July 17, 2001, the Board met and approved the Transaction and submission of the Transaction to the shareholders of the Fund for their approval.

6. Applicants submit that it was not possible to obtain shareholder approval of the New Advisory Agreement and the Transaction by June 16, 2001.

Applicants are requesting an order exempting them from section 15(a) of the Act during the Interim Period, which began on June 17, 2001 and will end on the earlier of (a) the date the New Advisory Agreement is approved or disapproved by the shareholders of the Fund, or (b) October 17, 2001. Applicants state that the meeting of shareholders will be held during the Interim Period. Turner has agreed to pay for the costs of preparing and filing the application, the costs relating to any special meetings of the Board, and the costs relating to the solicitation of shareholder approval of the New Advisory Agreement and the Transaction.

7. Applicants represent that the New Advisory Agreement meets all of the requirements of rule 15a-4(b)(2)(i)-(vi), except that in person Board approval occurred on June 20, 2001, rather than prior to the termination of the Former Advisory Agreement. Applicants represent that the New Advisory Agreement contains the same terms and conditions as the Former Advisory Agreement, with the exception of its effective and termination dates and the contract termination and escrow provisions required by rule 15a-4(b)(2)(iv) and (vi). The compensation to be received by Turner under the New Advisory Agreement will be the same as the compensation the Adviser would have received under the Former Advisory Agreement. Applicants further represent that the Board, including a majority of the independent trustees,

determined that the scope and quality of the services to be provided by Turner under the New Advisory Agreement will be at least equivalent to the scope and quality of the services provided by the Adviser under the Former Advisory Agreement.

8. Applicants state that the New Advisory Agreement is terminable by the Board or a majority of the Fund's outstanding voting securities, without penalty, on not more than 10 calendar days' written notice to Turner, in compliance with rule 15a-4(b)(2)(iv). Applicants further state that during the Interim Period, Turner's fees will be paid into an interest-bearing escrow account with the Fund's custodian. Payment of the amounts held in the escrow account will be made in accordance with rule 15a-4(b)(2)(vi).

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) of the Act further requires that such written contract provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to reflect control. As majority owner of the Adviser, Mr. Giordano presumably controlled the Adviser. Applicants state that the death of Mr. Giordano resulted in an assignment of the Former Advisory Agreement and its automatic termination.

2. Rule 15a-4(b)(1) under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated, an adviser may serve for up to 150 days under a written contract that has not been approved by the investment company's shareholders, provided that (a) the new contract is approved by the company's board of directors (including a majority of the directors who are not interested persons of the company) within 10 business days after the

termination, at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the terminated contract (which must have been approved by the company's shareholders); and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants relied on rule 15a-4(b)(1) with respect to adoption of the Interim Advisory Agreement and the Subadvisory Agreement.

3. Rule 15a-4(b)(2) under the Act provides, in pertinent part, that in the case of an assignment of an investment advisory contract with an investment company by an investment adviser or a controlling person of the investment adviser in connection with which the investment adviser or a controlling person directly or indirectly receives money or other benefit, an adviser may serve for up to 150 days under a written contract that has not been approved by the investment company's shareholders, provided that:

(a) The compensation to be paid under the new contract does not exceed the compensation that would have been paid under the terminated contract (which must have been approved by the company's shareholders) (paragraph (b)(2)(i));

(b) The board of directors of the investment company, including a majority of the directors who are not interested persons of the company, has voted in person to approve the new contract before the previous contract is terminated (paragraph (b)(2)(ii));

(c) The board of directors of the company, including a majority of the directors who are not interested persons of the company, determines that the scope and quality of services to be provided to the company under the new contract will be at least equivalent to the scope and quality of services provided under the previous contract (paragraph (b)(2)(iii));

(d) The new contract provides that the company's board of directors or a majority of the company's outstanding voting securities may terminate the contract at any time, without the payment of any penalty, on not more than 10 calendar days' written notice to the investment adviser (paragraph (b)(2)(iv));

(e) The new contract contains the same terms and conditions as the

terminated contract, with the exception of its effective and termination dates, provisions governed by paragraphs (b)(2)(i), (b)(2)(iv), and (b)(2)(vi), and any other differences in terms and conditions that the board of directors, including a majority of the directors who are not interested persons of the company, finds to be immaterial (paragraph (b)(2)(v)); and

(f) The new contract contains the following provisions:

(i) The fee earned under the contract will be held in an interest-bearing escrow account with the company's custodian or a bank; and

(ii) If a majority of the company's outstanding voting securities do not approve the new contract, the investment adviser will be paid, out of the escrow account, the lesser of: (A) any costs incurred in performing the interim contract (plus interest earned on that amount while in escrow); or (B) the total amount in the escrow account (plus interest earned) (paragraph (b)(2)(vi)).

4. Applicants cannot rely on rule 15a-4 in connection with the New Advisory Agreement because an "interim contract" within the meaning of the rule must have a duration of no more than 150 days following the date on which the previous contract that was approved by shareholders was terminated. Under the proposed condition, however, applicants will comply with all of the provisions of paragraphs (b)(2)(i) and (b)(2)(iii)-(vi) of rule 15a-4 described above.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

6. Applicants state that the requested relief satisfies this standard. Applicants state that the need for the relief developed as a result of the sudden death of Mr. Giordano and from the Adviser and the Board giving careful consideration to what alternative arrangements might be most beneficial to the Fund and its shareholders. Applicants submit that under the proposed condition, the interests of the shareholders will be safeguarded during the Interim Period. In addition, allowing the implementation of the new Advisory Agreement will ensure that there is no disruption to the investment program and the delivery of services to the Fund.

Applicants' Condition

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

1. Applicants will comply with rule 15a-4(b)(2)(i), (iii), (iv), (v) and (vi) during the period covered by the requested order, with "previous contract" construed to mean the Former Advisory Agreement and "interim contract" construed to mean the New Advisory Agreement.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-18942 Filed 7-27-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25076; 812-12004]

Markman MultiFund Trust, et al; Notice of Application

July 24, 2001.

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

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies outside the same group of investment companies.

Applicants: Markman MultiFund Trust (the "Trust") and Markman Capital Management, Inc. (the "Adviser").

Filing Dates: The application was filed on February 25, 2000 and amended on July 20, 2001.

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 August 16, 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