

unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 25, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31616 Filed 12-2-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22904/812-10608]

Acorn Investment Trust; Notice of Application

November 24, 1997.

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

ACTION: Notice of Application for an order (i) under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) of the Act; (ii) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1); and (iii) under section 17(d) of the Act and rule 17d-1 to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicant requests an order to permit Acorn Investment Trust ("Acorn") to enter into deferred compensation arrangements with its trustees who are not interested persons of Acorn.

Filing Dates: The application was filed on April 7, 1997 and amended on August 22, 1997. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1997, and should be

accompanied by proof of service on applicant, 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, N.W., Washington, D.C. 20549. Acorn Investment Trust, 227 West Monroe Street, Suite 3000, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574, 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, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicant's Representations

1. Acorn is a registered open-end management investment company organized as a Massachusetts business trust. Acorn currently offers three series: Acorn Fund, Acorn International, and Acorn USA (the "Acorn Funds," together with any additional series offered by Acorn in the future, the "Funds"). Wagner Asset Management, L.P. serves as investment adviser to the Funds. Acorn requests that the relief apply to the Funds and any successors in interest to Acorn or any existing or future series thereof.¹

2. Acorn's board of trustees ("Trustees") currently consists of nine persons, seven of whom are not "interested persons" of Acorn within the meaning of Section 2(a)(19) of the Act ("Eligible Trustees"). Each Eligible Trustee receives an annual retainer plus an additional fee for each board meeting and each pricing committee meeting attended. Acorn's Trustees have approved a deferred compensation plan for the Eligible Trustees (the "Plan"). The purposes of the Plan is to permit the Eligible Trustees to defer any or all of their compensation from Acorn for federal income tax purposes. An Eligible Trustee's election to defer any or all of such compensation will continue in effect for each calendar year unless the Eligible Trustee delivers to the

administrator of the Plan a written revocation or modification of the election.

3. If an Eligible Trustee elects to defer compensation pursuant to the Plan, compensation will be credited to a book reserve account established by Acorn (the "Deferral Account"), as of the date the compensation otherwise would have been payable to the Eligible Trustee. Each Eligible Trustee may elect to have his or her compensation treated as if it had been invested and reinvested in shares of one or more of the Funds or of any unaffiliated money market fund with which the Funds enjoy exchange privileges ("Shares"), and may from time to time change his or her designation of Shares.²

4. The compensation credited to a Deferral Account for each Eligible Trustee will be treated as if it had been invested in the Shares at the current net asset value ("NAV") of the Shares on the date the compensation is credited to the Deferral Account. Thereafter, the value of the Deferral Account will fluctuate as the NAV of the Shares fluctuates, and will also reflect the value of the assumed reinvested dividends or capital gains distributions in additional Shares. It is intended that each Fund may purchase Shares in amounts equal to the deemed investment of the Deferral Accounts of the Eligible Trustees.³ If a Fund purchases Shares, the Shares will be held solely in the name of that Fund. When a Fund purchases Shares, liabilities created by the credits to the Deferral Accounts under the Plan are expected to be matched by an equal amount of assets (i.e., a direct investment in the Shares).

5. The Plan provides that each Fund's respective obligation to make payments of amounts accrued in each of the Deferral Accounts will be a general obligation of that Fund, and payments made pursuant to the Plan will be made from that Fund's general assets and property. No Fund will be liable for any other Fund's respective obligation to make payments under the Plan. Each Eligible Trustee will be a general unsecured creditor of a Fund. The Plan also provides that a Fund will not be under an obligation to purchase, hold, or dispose of any investments under the Plan. If a Fund chooses to purchase investments to cover its obligations under the Plan, such investments will

² The Plan may be amended in the future to permit an Eligible Trustee to have the return on the compensation measured by the return on shares of an investment company other than one of the Acorn Funds or an unaffiliated money market fund.

³ Acorn's purchase of Shares will be made for the benefit of Acorn and not for the benefit of participating Eligible Trustees.

¹ For purposes of the application, "successors in interest" is limited to entities that result from a reorganization due to change of legal domicile or a change in form of business organization, e.g., partnership to corporation.

continue to be a part of the general assets and property of that Fund. Applicants state that the number of Shares purchased under the Plan will be *de minimis* in relation to the size of each Fund.

6. Under the Plan, amounts credited to an Eligible Trustee's Deferral Account generally will become payable in cash when an Eligible Trustee retires from the board. An Eligible Trustee may elect to receive payment in a lump sum or in equal annual installments over a period of five years. If an Eligible Trustee dies prior to the commencement of the distribution from the Deferral Account, the balance of the Deferral Account will be distributed to the Eligible Trustee's designated beneficiary in a lump sum as soon as practicable. If an Eligible Trustee dies after the commencement of such distribution, but prior to the complete distribution of the Deferral Account, the balance will be distributed to the beneficiary over the remaining distribution period. The Trustees, in their sole discretion, may accelerate the distribution of the Deferral Account. In all other events, the Eligible Trustee's right to receive distributions from the Deferral Account will be non-transferable.

7. The Plan also permits an Eligible Trustee to apply to the Plan administrator at any time for a full or partial withdrawal on the basis of "hardship or unforeseen emergency" as defined in the Plan. The Plan has reserved the right to accelerate or extend payment of amounts in the Deferral Account at any time after the termination of the Eligible Trustee's service as a trustee or in the event of a change in control of Acorn's investment adviser. In addition, in the event of liquidation, dissolution, or winding up of Acorn or the distribution of all or substantially all of Acorn's assets and property to its shareholders, or in the event of a merger or reorganization of Acorn (unless prior to such merger or reorganization, the Trustees determine that the Plan shall survive the merger or reorganization), all unpaid amounts in the Deferral Accounts will be paid in a lump sum to the Eligible Trustees on the effective date of such liquidation, dissolution, winding up, distribution, merger, or reorganization.

Applicant's Legal Analysis

1. Applicant requests an order under (i) section 6(c) of the Act to exempt Acorn from the provisions of sections 13(a)(2), 18(f)(1), 22(f), and 22(g) to the extent necessary to permit Acorn to implement the Plan; (ii) sections 6(c) and 17(b) of the Act to exempt Acorn from the provisions of section 17(a) to

permit each Fund to sell securities of which it is the issuer to other Funds in connection with the Plan; and (iii) section 17(d) of the Act and rule 17d-1 to permit Acorn and the Eligible Trustees to effect certain transactions incident to the Plan.

2. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such 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.

3. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing senior securities. In addition, section 13(a)(2) of the Act requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Section 18(g) of the Act defines "senior security" to include "any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness." Applicant states that the plan does not possess any of the characteristics of senior securities that led to the enactment of sections 13(a)(2) and 18(f)(1). Applicant states that Acorn will not be "borrowing" from its Eligible Trustees, and liabilities created by credits to the Deferral Accounts under the Plan are expected to be offset by equal amounts of assets of Acorn that would not otherwise exist if the compensation was paid on a current basis. Applicant asserts that the Plan will not induce speculative investments by Acorn or provide opportunity for manipulative allocation of the expenses and profits of Acorn. Applicant also asserts that the control of Acorn will not be affected, and the Plan will not confuse investors.

4. Section 22(f) prohibits restrictions on the transferability of negotiability of redeemable securities issued by an open-end investment company unless the restrictions are disclosed in its registration statement and do not contravene SEC rules and regulations. Applicant asserts that the restriction on the transferability of benefits under the Plan is clearly described in the Plan, is included in the Plan primarily to benefit the Eligible Trustees, and would not adversely affect the interests of Acorn's shareholders.

5. Section 22(g) generally prohibits registered open-end investment companies from issuing any of their securities for services or for property

other than cash or securities. Applicant believes that section 22(g) is primarily concerned with the dilutive effect on the equity and voting power of the common stock of an investment company if securities are issued for consideration not readily valued. Applicant asserts that interests under the Plan will not entitle the Eligible Trustees to vote as shareholders or participate in the profit and gain of Acorn. In addition, applicant asserts that the Eligible Trustees' interests in the Plan are non-transferable, and an Eligible Trustee's right to receive payments under the Plan is not granted in return for services. Thus, applicant contends that the Plan merely provides for the deferral of compensation and any rights under the Plan should be viewed as being "issued" in return for Acorn not being required to pay the compensation on a current basis.

6. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicant submits that the Funds and other investment companies that have the same investment adviser may be "affiliated persons" within the meaning of section 2(a)(3) of the Act. Applicant states that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they are associated or to acquire controlling interests in such enterprises. Applicant believes that an exemption from this provision would facilitate the matching of its liability for deferred compensation with the value of the Shares chosen by the Eligible Trustees.

7. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, (b) the transaction is consistent with the policy of each registered investment company concerned, and (c) the transaction is consistent with the general purposes of the Act. Applicant submits that the terms of the proposed transactions under the Plan that involve the acquisition of Shares by Funds are fair and reasonable to all parties, are consistent with the Act and the Funds' policies, and meet all the standards of section 17(b) of the Act. Applicant further submits that the requested relief from various provisions of the Act meets the standards for an exemption set forth in section 6(c) of the Act.

8. Section 17(d) and rule 17d-1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. In passing on applications for such orders, rule 17-d provides that the SEC will consider whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicant asserts that the Eligible Trustees will neither directly nor indirectly receive benefits that would otherwise inure to Acorn or its shareholders because (a) a Fund may choose to invest in Shares, (b) amounts credited to the Deferral Account will be adjusted to reflect income, gains, and losses relating to the investment of the assets of such Fund, and (c) such income, gains, or losses will be identical to what any shareholder in that Fund would receive whose shares were not subject to the Plan. Applicants contend that deferral of an Eligible Trustee's compensation in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the compensation were paid on a current basis and then invested in the Shares.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31620 Filed 12-2-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22912; 812-10348]

AFC (USA) I, Inc.; Notice of Application

November 26, 1997.

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

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY OF THE APPLICATION: Applicant, AFC (USA) I, Inc., requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company, Airbus Finance Company Limited.

FILING DATES: The application was filed on November 13, 1996, and amended on July 17, 1997 and November 24, 1997.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1997, 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, N.W., Washington, D.C. 20549. Applicant, c/o Catharine Ennis, George's Dock House, 2nd Floor, International Financial Services Center, Dublin 1, Ireland.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, 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, N.W., Washington, DC 20549, (tel. 202-942-8090).

Applicant's Representations

1. Applicant is a Delaware corporation formed in July, 1996. All of applicant's outstanding voting securities are owned by Airbus Finance Company Limited ("AFC"). AFC, a limited liability company incorporated under the laws of Ireland, provides sales financing support to the customers of Airbus Industrie G.I.E. ("Airbus Industrie").¹ AFC and Airbus Industrie are each owned indirectly by Aerospatiale S.N.I., Daimler-Benz A.G. ("Daimler-Benz"), British Aerospace plc ("BAe"), and Construcciones Aeronauticas S.A. ("CASA").

2. Applicant was organized to engage in financing activities to provide funds for use in the operations of AFC. Applicant proposes to obtain funds

¹ Applicant represents that AFC does not constitute a "partnership" or "joint venture" within the meaning of rule 3a-5(a)(4) under the Act and is substantially equivalent to a U.S. corporation for the purposes of rule 3a-5(b)(2) under the Act.

through the offer and sale of its debt securities in the United States and European or other overseas markets, and to lend the proceeds to AFC.

3. Due to the nature of capital markets, applicant may, from time to time, issue securities in amounts in excess of the amounts required by AFC at any given time. However, at least 85% of the cash or cash equivalents raised by applicant will be loaned to AFC as soon as practicable, but in no event later than six months after applicant's receipt of the cash or cash equivalents. Amounts that are not loaned to AFC will be invested in government securities, securities of AFC or a company controlled by AFC (or, in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), or debt securities which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

4. Any issuance of debt securities by applicant to the public in the United States will be unconditionally guaranteed by AFC as to the timely payment of principal, interest, and premium, if any (a "Guarantee"). Guarantee will provide each holder of debt securities issued by applicant a direct right of action against AFC to enforce AFC's obligations under the Guarantee without first proceeding against applicant.

5. Until AFC has achieved a specified long-term debt rating at or above investment grade (the "AFC Rating"), any debt securities issued by applicant to the public in the United States also will be unconditionally guaranteed on a separate basis by each of Aerospatiale S.N.I., Daimler-Benz, BAe, and CASA, or any additional or substitute indirect owner of AFC as to the timely payment of principal of, interest, and premium, if any, on the debt securities.

6. In the future applicant may obtain funds through the offer and sale of non-voting preferred stock. Applicant will guarantee such stock with a guarantee complying with rule 3a-5(a)(2) under the Act.

Applicant's Legal Analysis

1. Rule 3a-5 under the Act provides an Exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Rule 3a-5 is premised on the notion that it is appropriate to exempt a finance subsidiary from all provisions of the Act when the primary purpose of the finance subsidiary is to finance the business operations of its parent