

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28420; 812-13533]

Forward Funds and Forward Management, LLC; Notice of Application

September 29, 2008

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

Summary of Application: Applicants request an order that would supersede an existing order that permits them to enter into and materially amend subadvisory agreements without shareholder approval (“Existing Order”).<sup>1</sup>

Applicants: Forward Funds (the “Trust”) and Forward Management, LLC (“Forward Management”).

Filing Dates: The application was filed on May 19, 2008 and amended on September 25, 2008.

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 October 24, 2008, 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

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<sup>1</sup> Forward Funds, et al., Investment Company Act Release Nos. 27777 (April 5, 2007) (notice) and 27814 (May 1, 2007) (order).

contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-1090; Applicants, 433 California Street, 11<sup>th</sup> Floor, San Francisco, CA 94104.

For Further Information Contact: Mary Kay Frech, Branch Chief, or Michael W. Mundt, Assistant Director, at (202) 551-6821 (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 Desk, 100 F St., NE, Washington, DC 20549-1520 (telephone (202) 551-5850).

Applicants' Representations:

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust currently offers sixteen series (the "Funds"), each with its own investment objectives, policies, and restrictions. Applicants request that the order apply to: (a) the Funds; and (b) any future series of the Trust and any other registered open-end management investment companies or series thereof that (1) use the "manager-of-managers" arrangement described in the application, (2) comply with the terms and conditions of the application, and (3) are advised by a Manager (as defined below) (the investment companies and their series, as well as the Funds, the "Sub-Advised Funds").<sup>2</sup>

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<sup>2</sup> All existing entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application. If the name of any Sub-Advised Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager that serves as the

2. Forward Management is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) and serves as investment adviser to the Funds pursuant to an investment advisory agreement with the Trust, on behalf of the Funds (“Advisory Agreement”). The Advisory Agreement has been approved by the Trust’s board of trustees (“Board”), including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Trust (the “Independent Trustees”), as well as by the shareholders of the Funds. The term “Manager” refers to Forward Management and any existing or future entity controlling, controlled by, or under common control with Forward Management that is an investment adviser registered under the Advisers Act and any successor in interest thereto.<sup>3</sup>

3. Under the terms of the Advisory Agreement, the Manager provides investment advisory services to each Sub-Advised Fund and has the authority, subject to Board approval, to enter into investment subadvisory agreements (“Sub-Advisory Agreements”) with one or more subadvisers (“Sub-Advisers”). Each Sub-Adviser is registered under the Advisers Act. The Manager will monitor and evaluate the Sub-Advisers and recommend to the Board their hiring, retention or termination. Sub-Advisers recommended to the Board by the Manager are selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser has discretionary authority to invest the assets or a portion of the assets of the relevant Sub-Advised Fund. For its services, the Manager receives a fee from the Sub-Advised Fund computed as a percentage of the Sub-Advised Fund’s net assets.

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primary adviser to the Sub-Advised Fund will precede the name of the Sub-Adviser.

<sup>3</sup> A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

4. Applicants request an order that would permit the Manager to hire Sub-Advisers and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested order would supersede the Existing Order to allow a Sub-Adviser to be compensated either (a) by the Manager out of the advisory fees it receives from the Sub-Advised Fund, or (b) directly by the Sub-Advised Fund out of its assets.<sup>4</sup> The conditions of the requested order are identical to the conditions in the Existing Order, except for the addition of condition 10, which addresses Sub-Adviser compensation paid directly by a Sub-Advised Fund. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Sub-Advised Fund or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Sub-Advised Funds (“Affiliated Sub-Adviser”).

Applicants’ Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company’s outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the

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<sup>4</sup> Under the Existing Order, the Manager compensates each Sub-Adviser out of the fees paid to the Manager under the Advisory Agreement.

protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Sub-Advised Funds' shareholders are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Sub-Advised Fund's investment objectives. Applicants assert that, from the perspective of an investor in the Sub-Advised Fund, the role of the Sub-Advisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Sub-Advised Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

4. Applicants state that for tax or other reasons as may be determined by the Board and the Manager to be relevant from time to time, certain Sub-Advised Funds may pay fees directly to the Sub-Adviser rather than having the Manager pay the Sub-Adviser out of its advisory fees. With respect to the Sub-Advised Funds that pay Sub-Advisers directly, any change to a Sub-Advisory Agreement that results in an increase in the total management and advisory fees payable by a Sub-Advised Fund will be required to be approved by the shareholders of the Sub-Advised Fund.

5. Applicants note that the Commission has proposed rule 15a-5 under the Act and agree that the requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.<sup>5</sup>

Applicants' Conditions:

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

1. Before a Sub-Advised Fund may rely on the requested order, the operation of the Sub-Advised Fund in the manner described in the application will be approved by a majority of the Sub-Advised Fund's outstanding voting securities, as defined in the Act, or in the case of a Sub-Advised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Sub-Advised Fund to the public.

2. Each Sub-Advised Fund will disclose in its prospectus the existence, substance and effect of the order. In addition, each Sub-Advised Fund will hold itself out to the public as employing the manager-of-managers arrangement described in the application. The prospectus relating to each Sub-Advised Fund will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee Sub-Advisers and to recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Adviser, the Manager will furnish shareholders of the applicable Sub-Advised Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this condition, the Manager will provide shareholders of the applicable Sub-Advised Fund with an information

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<sup>5</sup> Investment Company Act Release No. 26230 (Oct. 23, 2003).

statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser unless such agreement, including the compensation to be paid thereunder, has been approved by the shareholders of the applicable Sub-Advised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Sub-Adviser is proposed for a Sub-Advised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of such Sub-Advised Fund and its shareholders and does not involve a conflict of interest from which the Manager or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general investment management services to each Sub-Advised Fund, including overall supervisory responsibility for the general management and investment of each Sub-Advised Fund's assets and, subject to review and approval by the Board, will: (a) set the Sub-Advised Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-Advisers to manage all or a part of the Sub-Advised Fund's assets; (c) when appropriate, allocate and reallocate the Sub-Advised Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the Sub-Advisers' investment performance; and (e) implement procedures reasonably designed to ensure compliance by

the Sub-Adviser(s) with the Sub-Advised Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust, or director or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser, except for (a) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

9. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

10. For Sub-Advised Funds that pay a Sub-Adviser's fees directly from Fund assets, any changes to a Sub-Advisory Agreement that would result in an increase in the total management and advisory fees payable by a Sub-Advised Fund will be required to be approved by the shareholders of the Sub-Advised Fund.

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

Florence E. Harmon  
Acting Secretary