operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Subadviser to a discrete portion of a Multi-Segment Fund) will be an affiliated person or a second-tier affiliated of NFM, any Unaffiliated Subadviser, or any principal underwriter, promoter, officer, director, or employee of a Multi-Segment Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Segment during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

6. With respect to purchases by an Unaffiliated Segment of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17887 Filed 7–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25062; 812–12184]

Apex Municipal Fund, Inc., et al.; Notice of Application

July 12, 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, under sections 6(c) and 17(b) of the Act for an exemption from section 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: Applicants request an order to permit (a) certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; (b) the registered investment companies and certain affiliated institutional accounts to use cash collateral from securities lending transactions and/or uninvested cash to purchase shares of affiliated money market funds or affiliated private investment companies; (c) the registered investment companies to lend portfolio securities to affiliated broker-dealers; and (d) the registered investment companies to engage in certain purchase and sale transactions with each other.

Applicants: Apex Municipal Fund, Inc., The Asset Program, Inc., CBA Money Fund, CMA Government Securities Fund, CMA Money Fund, CMA Multi-State Municipal Series Trust, CMA Tax-Exempt Fund, CMA Treasury Fund, The Corporate Fund Accumulation Program, Inc., Corporate High Yield Fund II, Inc., Corporate High Yield Fund III, Inc., Corporate High Yield Fund, Inc., Debt Strategies Fund, Inc., Financial Institutions Series Trust—Summit Cash Reserves Fund, Global Financial Services Master Trust, Master Basic Value Trust, Master Equity Income Fund, Master Focus Twenty Trust, Master Internet Strategies Trust, Master Large Cap Series Trust, Master Mid Cap Growth Trust, Master Premier Growth Trust, Master Senior Floating Rate Trust, Master Small Cap Value Trust, Master U.S. High Yield Fund Trust, Mercury Global Holdings, Inc., Mercury Index Funds, Inc., Mercury QA Equity Series, Inc., Mercury QA Strategy Series, Inc., Merrill Lynch Arizona Municipal Bond Fund, Merrill Lynch Arkansas Municipal Bond Fund, Merrill Lynch Balanced Capital Fund, Inc., Merrill Lynch Bond Fund, Inc., Merrill Lynch California Insured Municipal Bond Fund, Merrill Lynch California Limited Maturity Municipal Bond Fund, Merrill Lynch California Municipal Bond Fund, Merrill Lynch Colorado Municipal Bond Fund, Merrill Lynch Connecticut Municipal Bond Fund, Merrill Lynch Developing Capital Markets Fund, Inc., Merrill Lynch Disciplined Equity Fund, Inc., Merrill Lynch Dragon Fund, Inc., Merrill Lynch Emerging Markets Debt Fund, Inc., Merrill Lynch Eurofund, Merrill Lynch Florida Limited Maturity Municipal Bond Fund, Merrill Lynch Florida Municipal Bond Fund, Merrill Lynch Focus Value Fund, Inc., Merrill Lynch Fundamental Growth Fund, Inc., Merrill Lynch Funds for Institutions Series, Merrill Lynch Global Allocation Fund, Inc., Merrill Lynch Global Bond Fund for Investment and Retirement, Merrill Lynch Global Growth Fund, Inc., Merrill Lynch Global Small Cap Fund, Inc., Merrill Lynch Global Technology Fund, Inc., Merrill Lynch Global Value Fund, Inc., Merrill Lynch Growth Fund, Merrill Lynch Healthcare Fund, Inc., Merrill Lynch High Income Municipal Bond Fund, Inc., Merrill Lynch Index Funds, Inc., Merrill Lynch Intermediate Term Fund of Merrill Lynch Municipal Series Trust, Merrill Lynch International Equity Fund, Merrill Lynch Latin America Fund, Inc., Merrill Lynch Maryland Municipal Bond Fund, Merrill Lynch Massachusetts Municipal Bond Fund, Merrill Lynch Michigan Municipal Bond Fund, Merrill Lynch Minnesota Municipal Bond Fund, Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Municipal Strategy Fund, Inc., Merrill Lynch Natural Resources Trust, Merrill Lynch New Jersey Municipal Bond Fund, Merrill Lynch New Mexico Municipal Bond Fund, Merrill Lynch New York Municipal Bond Fund, Merrill Lynch North Carolina Municipal Bond Fund, Merrill Lynch Ohio Municipal Bond Fund, Merrill Lynch Oregon Municipal Bond Fund, Merrill Lynch Pacific Fund, Inc., Merrill Lynch Pennsylvania Municipal Bond Fund, Merrill Lynch Ready Assets Trust, Merrill Lynch Real Estate Fund, Inc., Merrill Lynch Retirement Reserves Money Fund of Merrill Lynch Retirement Series Trust, Merrill Lynch Senior Floating Rate Fund, Inc., Merrill Lynch Series Fund, Inc., Merrill Lynch Short-Term Global Income Fund, Inc., Merrill Lynch Short-Term U.S. Government Fund, Inc., Merrill Lynch Texas Municipal Bond Fund, Merrill Lynch U.S. Government Mortgage Fund, Merrill Lynch U.S. Treasury Money Fund, Merrill Lynch USA Government Reserves, Merrill Lynch Utility and Telecommunications Fund, Inc., Merrill Lynch Variable Series Funds, Inc., Merrill Lynch World Income Fund, Inc., MuniAssets Fund, Inc., The Municipal Fund Accumulation Program, Inc., MuniEnhanced Fund, Inc., MuniHoldings California Insured Fund, Inc., MuniHoldings Florida Insured Fund, MuniHoldings Fund, Inc., MuniHoldings Fund II, Inc., MuniHoldings Insured Fund II, Inc., MuniHoldings Insured Fund, Inc., MuniHoldings Michigan Insured Fund II, Inc., MuniHoldings New Jersey Insured Fund, Inc., MuniHoldings New York Insured Fund, Inc., MuniInsured

Fund, Inc., MuniVest Fund, Inc., MuniVest Fund II, Inc., MuniYield Arizona Fund, Inc., MuniYield California Fund, Inc., MuniYield California Insured Fund II, Inc., MuniYield California Insured Fund, Inc., MuniYield Florida Fund, MuniYield Florida Insured Fund, MuniYield Fund, Inc., MuniYield Insured Fund, Inc., MuniYield Michigan Fund, Inc., MuniYield Michigan Insured Fund, Inc., MuniYield New Jersey Fund, Inc., MuniYield New Jersey Insured Fund, Inc., MuniYield New York Insured Fund, Inc., MuniYield Pennsylvania Insured Fund, MuniYield Quality Fund II, Inc., MuniYield Quality Fund, Inc., Quantitative Master Series Trust, Senior High Income Portfolio, Inc., Somerset Exchange Fund, and The S&P 500® Protected Equity Fund, Inc. (each a ''Fund''); Merrill Lynch Investment Managers, L.P. (''MLIM''), Fund Asset Management, L.P. (''FAM''), and Merrill Lynch Asset Management U.K. Limited (''MLAM UK'') (each an ''Adviser''); QA Advisers LLC (''QALLC''); and Merrill Lynch & Co., Inc., (''ML & Co.''), Merrill Lynch Pierce, Fenner & Smith Incorporated, Merrill Lynch Government Securities, Inc., and Merrill Lynch International (each an ''Affiliated Broker-Dealer'').

Filing Date: The application was filed on July 20, 2000 and amended on July 6, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 2, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o MLIM, L.P., P.O. Box 9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Sara Crovitz, Senior Counsel, or Michael W. Mundt, 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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0101 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Funds is either an open-end or closed-end management investment company registered under the Act. Several of the Funds are comprised of multiple series. Certain of the Funds are ''master funds'' in a ''master-feeder structure.'' Fifteen of the Funds are money market funds that comply with the requirements of rule 2a–7 under the Act (''Money Market Funds''). Each of the Funds is advised by either MLIM or FAM, and certain of the Funds are subadvised by MLAM U.K.

2. ML & Co. is a holding company incorporated in Delaware that provides investment, financing, insurance, and related services through its subsidiaries. Each of the Advisers is a wholly owned subsidiary of ML & Co. and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Each of the Affiliated Broker-Dealers is a subsidiary of ML & Co.

3. QALLC (also referred to as ''Lending Agent'') is a Delaware limited liability company of which MLIM is the sole member and is registered as an investment adviser under the Advisers Act. QALLC will serve as lending agent in a securities lending program (''Lending Program'') for certain Funds (''Lending Funds'') and institutional clients of entities controlled by or under common control with ML & Co. (''Institutional Clients''). Institutional Clients may include qualified employee benefit plans, trusts, corporate cash accounts, unregistered funds (including those exempted from the definition of investment company by sections 3(c)(1) or 3(c)(7) of the Act), Taft-Hartley plans, foundations, endowments and bank collective investment trusts. QALLC also will form a private investment company (''New Fund''), for which it will serve as managing member. New Fund will serve as an investment option for the cash collateral and/or uninvested cash of Funds and Institutional Clients. New Fund will not register under the Act in reliance on the exemption from the definition of investment company provided by section 3(c)(7).

4. Applicants request that the order also apply to (a) any other registered investment company or series thereof that currently is or in the future may be advised or sub-advised (subject to the condition set forth below) by any of the Advisers or any other entity controlling, controlled by, or under common control with any of the Advisers or ML & Co. (each Adviser or entity, and ''Advisory Entity''); (b) any other registered investment advisers that currently are or in the future may be controlling, controlled by, or under common control with any of the Advisers or ML & Co.; (c) any other broker-dealers now or in the future controlling, controlled by, or under common control with ML & Co.; and (d) any other unregistered fund organized to receive cash collateral and uninvested cash that may be managed by QALLC or any entity controlling, controlled by, or under common control with QALLC and/or ML & Co.[1] A Fund that is subadvised, but not advised, by an Advisory Entity may rely on the order, provided that the Advisory Entity manages the Cash Balances (as defined below) and that any relief granted from the provisions of sections 12(d)(1)(A) and (B) of the Act shall be available only if the Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Fund invests Cash Balances.

5. Each Lending Fund has the ability to increase its income by participating in the Lending Program, under which it may lend portfolio securities to broker-dealers, including Affiliated Broker-Dealers, or institutional investors deemed by its Adviser to be of good standing. Each Lending Fund will participate in the Lending Program subject to securities lending guidelines adopted by the Fund's board of directors/trustees (''Board''), including by a majority of the directors/trustees who are not interested persons within the meaning of section 2(a)(19) of the Act (''Disinterested Directors''). The agreements governing any loans will require that the loans be continuously secured by collateral equal at all times in value to at least the market value of the securities loaned. Collateral for such loans may include cash)''Cash Collateral'') or other collateral, such as U.S. Government securities.

6. Under the Lending Program, the Lending Agent will be responsible for soliciting borrowers for each Lending

[1] All registered investment companies, unregistered investment vehicles, and investment advisers that currently intend to rely on the order are named as applicants. Any future Funds, unregistered investment vehicles, broker-dealers and investment advisers that rely on the requested relief will do so only in compliance with the terms and conditions of the application.

Fund's securities, monitoring daily the value of the loaned securities and collateral, and requesting that borrowers add to the collateral when required by the loan arrangements.[2] The Lending Agent may manage Cash Collateral only in accordance with specific parameters provided by the Lending Fund's Adviser. These guidelines include permissible investment of the Cash Collateral as well as a list of eligible types of investments.

7. When a securities loan is collateralized with Cash Collateral, the Lending Fund will receive a portion of the return earned on the investment of the Cash Collateral. Depending on the arrangements negotiated with the borrower by the Lending Agent, the Lending Fund may pay the borrower a rate of interest for use of the Cash Collateral. When the collateral is not Cash Collateral, the Lending Agent will negotiate a lending fee to be paid by the borrower to the Lending Fund. For its services to the Lending Funds, the Lending Agent will receive fees based on a share of the revenue generated from the securities lending transactions.

8. Funds may have uninvested cash (''Uninvested Cash'') that comes from a variety of sources, including dividend or interest payments, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemptions, as well as new monies received from investors.

9. Applicants propose that Funds (''Investing Funds'') and Institutional Clients invest Cash Collateral and Uninvested Cash (together, ''Cash Balances'') in shares of Money Market funds or New fund. At least one series of New Fund in which the Investing Funds invest will operate as a money market portfolio that complies with the requirements of rule 2a–7 under the Act. Another series will invest in high quality securities with relatively short maturities, but which will not necessarily comply with all of the investment restrictions of rule 2a–7.[3] Series of New Fund in which the Investing Funds invest will offer daily redemption of shares at current net asset value per share. New Fund will not impose any sales load or redemption or distribution fees on any series in which the Investing Funds invest. QALLC will not charge any investment advisory fee with respect to shares of any series of New Fund owned by an Investing Fund.

10. Applicants request an order to permit (a) Lending Funds to pay the Lending Agent a fee based on a share of the revenue derived from securities lending activities; (b) Investing Funds and Institutional Clients to invest Cash Balances in Money Market Funds and/or New Fund; (c) Lending Funds to lend portfolio securities to Affiliated Broker-Dealers; and (d) Investing Funds to engage in certain transactions with each other.

Applicant's Legal Analysis

A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

2. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person, and if the other person is an investment company, the investment adviser. The Advisers, as investment advisers to the Lending Funds, are affiliated persons of the Lending Funds. Applicants state that because the Lending Agent and the Advisers are under the common control of ML & Co., the Lending Agent may be deemed an affiliated person of the Advisers, and an affiliated person of an affiliated person (''second-tier affiliate'') of the Lending Funds. Accordingly, applicants request an order under section 17(d) and rule 17d–1 to permit each Lending Fund to pay and the Lending Agent to accept lending agent fees that are based on a share of the proceeds derived by the Lending Funds from the loans of portfolio securities.

3. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the Lending Agent will meet the standards of rule 17d–1:

(a) In connection with the initial approval of QALLC as Lending Agent for the Lending Funds, and implementation of the proposed fee arrangement, a majority of the Board of each Lending Fund (including a majority of the Disinterested Directors) will determine that: (i) the contract with QALLC is in the best interest of the Lending Fund and its shareholders; (ii) the services to be performed by QALLC are appropriate for the Lending Fund; (iii) the nature and quality of the services provided by QALLC are at least equal to those provided by others offering the same or similar services; and (iv) the fees for QALLC's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality;

(b) In connection with the approval of QALLC as Lending Agent for the Lending Funds and the initial implementation of the proposed fee arrangement, the Board of each Lending Fund will review competing quotations with respect to lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above;

(c) Each Lending Fund's contract with QALLC for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Directors) makes the findings referred to in paragraph (a) above.

(d) The Board, including a majority of Disinterested Directors, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness; and

(e) Each Lending Fund will (i) maintain and preserve permanently and in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting

[2] The personnel who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Lending Funds.

[3] An Investing Fund can invest Cash Collateral, but not Uninvested Cash, in a series of New Fund that does not comply with rule 2a–7.

forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which a determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Cash Balances in Money Market Funds and New Fund

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act 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. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each Investing Fund to use Cash Balances to acquire shares of one or more Money Market Funds in excess of the limits imposed by section 12(d)(1)(A), and the Money Market Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).[4] Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that the arrangement will not result in an inappropriate layering of fees because the Money Market Funds will not charge a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers Inc. Conduct rules (''NASD Conduct Rules''), or if such shares are subject to any such fees, the respective 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. In addition, before approving or renewing any advisory contract, the Board, including a majority of the Disinterested Directors, will consider the extent to which the advisory fees charged to an Investing Fund by its Adviser should be reduced or waived 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. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Applicants also represent that no Money Market Fund whose shares are acquired by an Investing Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A).

3. Sections 17(a)(1) and (2) of the Act prohibit an affiliated person of a registered investment company, or any second-tier affiliate, acting as principal, from selling any security to, or purchasing any security from, the registered investment company. As noted above, section 2(a)(3) defines an affiliated person of another person to include persons that are under common control. Applicants state that because the Advisers may be deemed to control the Funds and because QALLC may be deemed to control New Fund, the Funds and New Fund may be deemed to be affiliated persons, or second-tier affiliates. In addition, section 2(a)(3) defines an affiliated person of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person. To the extent that an Investing Fund owns 5% or more of the voting securities of a Money Market Fund or New Fund, applicants state that the Money Market Fund or New Fund could be an affiliated person of the Investing Fund. Accordingly, applicant state that section 17(a) would prohibit the sale of shares of the Money Market Fund or New Fund to an Investing Fund, and the redemption of such shares by the Money Market Fund or New Fund from the Investing Fund.

4. 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 policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction 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.

5. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investing Funds to use Cash Balances to purchase shares of the Money Market Funds or a series of New Fund and to permit the redemption of the shares. Applicants maintain that the terms of the proposed transaction are reasonable and fair because the Investing Funds will purchase and sell shares of the Money Market Fund or New Fund on the same terms and on the same basis as other shareholders. Applicants assert that the proposed transactions comply with each Investing Funds' investment restrictions and policies. Applicants state that Investing Funds that comply with the requirements of rule 2a–7 under the Act will only invest in a series of New Fund complying with the provisions of rule 2a–7. Applicants further state that investment of Cash Collateral in new Fund and the Money Market Funds will be conducted in accordance with the securities lending guidelines of the Commission's staff. Applicants also state that New Fund will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

6. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. In addition to the potential affiliations described above, applicants state that Institutional Clients also may be deemed affiliated persons of the Money Market Funds or New Fund because the Institutional Clients may be advised by Advisers or may own 5% or more of the outstanding voting securities of a Money Market Fund or a series of New Fund. Applicants state that the Investing Funds and Institutional Clients (by purchasing and redeeming shares of New Fund or a Money Fund), the

[4] No exemptive relief is sought from the provisions of section 12(d)(1)(A) and (B) with respect to any investments in a Money Market Fund by (a) any Fund that is subadvised (but not advised) by an Advisory Entity and that is not in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund, and (b) any Institutional Client that is a section 3(c)(1) or 3(c)(7) entity.

Advisers (by managing the assets of the Investing Funds and certain Institutional Clients), QALLC (by acting as investment adviser to New Fund and as Lending Agent), New Fund (by selling shares to and redeeming shares from the Investing Funds), and each Money Market Fund (by selling shares to and redeeming shares from the Investing Funds and Institutional Clients) may be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) and rule 17d–1 to permit the described transactions relating to investments of Cash Balances in the New Fund and Money Market Funds. For the reasons discussed above, applicants believe that the proposed transactions meet the standards of rule 17d–1

C. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such a person, acting as principal, to borrow money or other property from the registered investment company. Applicants state that because an Affiliated Broker-Dealer would be under common control with the Advisers, an Affiliated Broker-Dearler may be considered an affiliated person, or a second-tier affiliate, of a Lending Fund. Applicants state that section 17(a)(3) would prohibit Affiliated Broker-Dealers from borrowing securities from Lending Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d–1 to permit Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Fund will be made with a spread that is no longer than that applied to comparable loans to unaffiliated broker-dealers.[5] In this regard, applicants state that at least 50% of the loans made by the Lending Funds, on an aggregate basis, will be made to unaffiliated borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Lending Fund, including a majority of the Disinterested Directors, and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending fund. The Board, including a majority of the Disinterested Directors, also will review detailed quarterly compliance reports on all lending activity.

D. Interfund Transactions

1. Applicants state that the Funds currently rely on rule 17a–7 under the Act to engage in purchase and sale transactions of certain securities (''Interfund Transactions''). Rule 17a–7 excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies that are affiliated persons, or second-tier affiliates, of each other or between a registered investment company and a person that is an affiliated person of such company (or a second-tier affiliate) solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the Funds may become affiliated persons of each other by virtue of an Investing Fund owning 5% or more of the outstanding voting securities of a Money Market Fund or a series of New Fund. Thus, applicants state that certain Funds may not be able to rely on rule 17a–7 to effect Interfund Transactions.

2. Applicants request an order under sections 6(c) and 17(b) to permit the Interfund Transactions. Applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the additional affiliation created under sections 2(a)(3)(A) and (B) by the investment of Cash Balances does not affect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

Applicants' Conditions

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

A. General

1. New Fund will be advised by QALLC or an entity controlling, controlled by, or under common control with QALLC and/or ML & Co. Each Fund will be advised and/or subadvised by an Advisory Entity. A Fund that is subadvised, but not advised, by an Advisory Entity may rely on the order, provided that the Advisory Entity manages the Cash Balances and that any relief granted from the provisions of sections 12(d)(1)(A) and (B) of the Act shall be available only if the Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Fund invests Cash Balances.

2. The Lending Program of each Lending fund will comply with all present and future applicable Commission and staff positions regarding securities lending agreements.

3. Before a Lending Fund may participate in the Lending Program, a majority of the Board (including a majority of the Disinterested Directors) of the Lending Fund will approve the Lending Fund's participation in the Lending Program. The Board of each Lending Fund will evaluate the Lending Program and its results no less frequently than annually and a majority of the Board (including a majority of the Disinterested Directors) will determine that investing Cash Collateral in any of the Money Market Funds is in the best interests of the shareholders of the Lending Fund.

4. Each investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds and New Fund only to the extent that the Investing Fund's aggregate investment of such Uninvested Cash in the Money Market Funds and New Fund does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

B. Investment of Cash Balances in New Fund

1. A majority of the Board of an Investing Fund (including a majority of the Disinterested Directors), will initially and at least annually thereafter determine that the investment of Cash Balances in shares of New Fund is in the best interest of the shareholders of the Investing Fund.

2. QALLC will not charge any advisory fees with respect to a class or series of shares of New Fund in which any Investing Fund may invest.

3. Investment in shares of any series of New Fund by a particular Investing Fund will be consistent with that Investing Fund's investment objectives and policies.

[5] A ''spread'' is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the borrower to the Lending Fund (when non-cash collateral is posted) or the excess retained by the Lending Fund over a rebate rate payable by the Lending Fund to the borrower (when cash collateral is posted and then invested by the Lending Fund).

4. An Investing Fund's Cash Balances will be invested in a particular investment series of New Fund only if that investment series invests solely in the types of instruments that the Investing Fund has authorized for the investment of its Cash Balances.

5. Any investment series of New Fund that uses the penny rounding method of valuation as defined in rule 2a–7 under the Act will comply with rule 2a–7 under the Act. With respect to such series, New Fund (through QALLC as the managing member) will adopt and monitor the procedures described in rule 2a–7(c)(8) under the Act and QALLC will take such other actions as are required to be taken pursuant to such procedures. An Investing Fund may purchase shares of an investment series of New Fund using the penny rounding method of valuation only if QALLC determines on an ongoing basis that such investment series is in compliance with rule 2a–7. QALLC will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. This record will be subject to examination by the Commission and the staff.

6. An Investing Fund that complies with the requirements of rule 2a–7 under the Act will not invest its Cash Balances in an investment series of New Fund that does not comply with the requirements of rule 2a–7.

7. New Fund will comply as to each investment series in which any Investing Fund invests with the requirements, other than to the extent of transactions described in the application, of sections 17(a), (d) and (e) and 18 of the Act as if New Fund were a registered open-end investment company. With respect to all redemption requests made by an Investing Fund, New Fund will comply with section 22(e) of the Act. QALLC shall, as managing member, adopt procedures designed to ensure that any such series of New Fund complies with sections 17(a), (d) and (e), 18, and 22(e) of the Act. QALLC will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and the staff.

8. The net asset value per share of each series of New Fund in which the Investing Funds may invest will be determined separately for each series by dividing the value of the assets belonging to that series, less the liabilities of that series, by the number of shares of New Fund outstanding with respect to that series.

9. The shares of New Fund in which the Investing Funds may invest will not be subject to a sales load, redemption fee, any asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

10. Each Investing Fund will purchase and redeem shares of New Fund on the same basis as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis as other shareholders investing in the same series of New Fund (except that QALLC will not charge any investment advisory fee with respect to shares owned by an Investing Fund). A separate account will be established in the shareholder records of New Fund for the account of each applicable Investing Fund.

11. New Fund will not acquire any securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

C. Investment of Cash Balances in Money Market Funds

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to 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 NASD Conduct Rules), or if the shares are subject to any such fee, the respective Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the fees incurred by the Investing Fund.

2. Prior to reliance on this order, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. Before approving or renewing any advisory contract for an Investing Fund, the Board, including a majority of the Disinterested Directors, taking into account all relevant factors, 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 the Uninvested Cash being invested in the Money Market Fund. In connection with this consideration, the Adviser will provide the Investing Fund's 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 Fund. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the consideration relating to the fees referred to above.

3. Investment of Cash Balances 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 prospectuses and statements of additional information. Money Market Funds will not acquire shares of any investment company that does not comply with the requirements of rule 2a–7.

4. No Money Market Fund whose shares are acquired by an Investing Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

D. The Lending Exemption

1. The Lending Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated borrowers.

2. A Lending Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

3. (a) All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by each Lending Fund's Board and by a majority of the Disinterested Directors (''Schedule of Spreads'').

(b) The Schedule of Spreads will set forth rates of compensation to the Lending Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all borrowers of the Lending Fund's portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any borrower.

(d) If a security is loaned to an unaffiliated borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) The Lending Fund's Lending Program will be monitored on a daily basis by an officer of the Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Lending Fund's Board, including a majority of the Disinterested Directors.

4. The total value of the securities loaned to any one broker-dealer on the approved list of borrowers of securities from a Lending Fund will be in accordance with a schedule to be approved by the Board of each Lending Fund, but in no event will the total value of the securities loaned to any one Affiliated Broker-Dealer exceed 10% of the net assets of such Lending Fund, computed at market value.

5. The Boards of the Lending Funds, including a majority of the Disinterested Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Lending Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal years in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of securities loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable, and that the procedures followed in making such loan were in accordance with the procedures and other undertakings set forth herein.

E. Interfund Transactions

1. To engage in Interfund Transactions, the Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or second-tier affiliates) of each other solely by reason of having a common investment adviser, or investment advisers that are affiliated persons of each other, common officers, and/or common directors, solely because the Funds might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

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. 34–44538; File No. SR–Amex–2001–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Reinstatement for 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

July 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to reinstate for 90 days its pilot program relating to facilitation cross transactions, described in detail in part II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

In its filing with the Commission, the Amex 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to reinstatement for 90 days its pilot program, which expired on May 28, 2001, relating to member firm facilitation cross transactions. Revised Commentary .02(d) to Amex Rule 950(d), approved by the Commission on June 2, 2000,[3] established a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker to, under certain conditions, cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer

[3] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000). The pilot program was subsequently extended twice. *See* Securities Exchange Act Release Nos. 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000), and 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that with a contra side order from the firm's proprietary account.