purposes fairly intended by the policy and provisions of the Act. Section 15(f)(3)(B) provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A).

3. Applicants state that the net assets of Enterprise Government and Enterprise Money ($79,375,576 and $60,417,051 respectively, as of December 31, 1996) are substantially greater than the net assets of Retirement Intermediate and Retirement Money ($6,487,280 and $1,670,085 respectively, as of December 31, 1996), individually. Applicants also state that the net assets of Enterprise Funds ($952,100,717, as of December 31, 1996) as a whole are far greater than the net assets of the four Retirement Funds ($27,242,022, as of December 31, 1996), even though the two newly created portfolios will initially have no assets other than what is received from the Retirement Funds, making the Retirement Funds' assets less than 3% of Enterprise Funds' assets.

4. Applicants submit that it is appropriate for the assets of Enterprise Funds as a whole, as opposed to the individual Enterprise Portfolios, to be taken into account when considering the ''substantially greater'' test of section 15(f)(3)(B). Applicants contend that any other conclusion would be inconsistent with the literal language of the Act. Applicants state that section 15(f)(3)(B) specifically refers to the sale of assets of one investment company to another ''investment company with assets substantially greater in amount.'' Enterprise Funds is the investment company involved in each Reorganization and, in fact, the board of directors of Enterprise Funds must authorize the Reorganization on behalf of the Enterprise Portfolios.

5. The boards of directors of Retirement Inc. and Enterprise Funds consist of the following, including the respective number of directors who are ''interested persons,'' of Retirement Investors, Retirement Group, or Enterprise Capital, as the case may be, within the meaning of section 2(a)(19) of the Act (''Interested Directors''), and who are not Interested Directors (''Disinterested Directors''):

Investment company	Number of interested directors	Number of disinterested directors	Total
Enterprise Funds	3	4	7
Retirement Inc	3	4	7

In order to comply with section 15(f)(1)(A) following consummation of the transactions, Enterprise Funds would have to add five Disinterested Directors or reduce the number of Interested Directors from three to one. If Enterprise Funds were to add five Disinterested Directors, a vote of shareholders would be required pursuant to section 16(a) of the Act, which requires that at least two-thirds of a fund's trustees be elected by shareholders. Enterprise Funds would not otherwise be required to hold a shareholders meeting under Maryland law. Applicants submit that reconstitution of the board of Enterprise Funds would serve no public interest, and in fact, would be contrary to the interests of shareholders of Enterprise Funds.

6. For the reasons stated above, applicants submit that the requested relief is necessary and 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11741 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22647; 813–162]

Merrill Lynch KECALP L.P. 1997 and KECALP Inc.; Notice of Application

April 30, 1997.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Merrill Lynch KECALP L.P. 1997 (the ''1997 Partnership'') and KECALP Inc. (the ''General Partner'').

RELEVANT ACT SECTION: Order requested under section 6(b).

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order [1] (the ''1982 Order''), as previously amended by a subsequent order [2] (the ''1991 Order'' and, together with the 1982 Order, the ''Order''), to permit Merrill Lynch & Co., Inc. and its affiliates (''ML & Co.'') to acquire limited partnership interests in the 1997 Partnership and in any similar partnership commencing operations in the future (collectively, the ''Partnerships''). Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on December 3, 1996, and amended on April 30, 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 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 May 27, 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 5th Street, NW, Washington, DC 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, NY 10080–6123.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Attorney, at (202) 942–0641, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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.

Applicants' Representations

1. The 1997 Partnership is a Delaware limited partnership registered under the Act as a non-diversified, closed-end management investment company. The

[1] *Merrill Lynch KECALP Ventures Limited Partnership 1982, KECALP Inc.*, Investment Company Act Release Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order).

[2] *Merrill Lynch KECALP Growth Investments Limited Partnership 1983, et. al.*, Investment Company Act Release Nos. 18081 (Apr. 18, 1991) (notice) and 18137 (May 7, 1991) (order).

1997 Partnership is an ''employees securities company'' within the meaning of section 2(a)(13) of the Act, and will operate pursuant to the terms of the Order. In accordance with the terms of the Order, limited partnership interests in the 1997 Partnership (''Units'') will be offered to certain employees of ML & Co. and its subsidiaries and to non-employee directors of ML & Co. and, to the extent the relief requested herein is granted, to ML & Co.

2. The General Partner is an indirect, wholly-owned subsidiary of ML & Co. The General Partner is registered as an investment adviser under the Investment Advisers Act of 1940. The General Partner was formed to manage each of the partnerships operating in accordance with the terms of the Order (together with the Partnerships, the ''KECALP Partnerships'') and has the authority to make all decisions regarding the acquisition, management, and disposition of the KECALP Partnerships' investments. All investments and dispositions of investments by the KECALP Partnerships are approved by the board of directors of the General Partner.

3. The Order limits the classes of potential investors eligible for participation in the KECALP Partnerships to directors of ML & Co. and key officers and other employees of ML & Co. and its subsidiaries. Key officers and other employees must have earned a gross income from ML & Co. during the most recent calendar year which exceeds the minimum amount specified by the General Partner for each Partnership. The 1991 Order amended the 1982 Order to include conditions relating to the eligibility requirements of investors in any KECALP Partnership.

4. Applicants request an amendment to the Order to permit Units to be acquired by ML & Co. in connection with certain deferred compensation plans offered by ML & Co. to select employees satisfying significant eligibility requirements that will, in all cases, exceed the standards for participation directly in the KECALP program. Pursuant to the deferred compensation plans, eligible employees of ML & Co. and its subsidiaries would be permitted to defer compensation earned during a particular year and to elect to receive a return on such deferred compensation determined by reference to the performance of one of several investment options, including the performance of a Partnership. ML & Co. would acquire Units having a purchase price approximately equivalent to the aggregate amount of compensation deferred under its plan for which the Partnership option was selected. ML & Co. would acquire such Units at the closing of the offering of a Partnership for a purchase price per Unit equal to the price paid by all other limited partners participating in the Partnership's offering. Participants in the plan would not acquire any ownership interest in the Units purchased by ML & Co. The acquisition of Units by ML & Co. would be made solely to mirror the deferred compensation elections of its employees who have elected to receive a return determined by reference to the performance of a Partnership, and not for ML & Co.'s own proprietary investment. ML & Co. will agree to vote its interests in a Partnership in identical proportions as the other limited partners in respect of any matter submitted for a vote of limited partners.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(b) of the Act to amend the Order to permit ML & Co. to acquire Units in the Partnerships in connection with certain deferred compensation programs offered by Merrill Lynch to select highly compensated employees upon the terms set forth in the applications.

2. Section 2(a)(13) of the Act defines ''employees' securities company'' as any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (a) By the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (b) by former employees of such employer or employers, (c) by members of the immediate family of such employees, persons on retainer, or former employees, (d) by any two or more of the foregoing classes of persons, or (e) by such employer or employers together with any one or more of the foregoing classes of persons. Section 6(b) of the Act provides that the SEC may, upon application, exempt an employees' securities company from provisions of the Act if, and to the extent that, the exemption is consistent with the protection of investors. Applicants are not seeking relief from any additional provisions of the Act.

3. Applicants believe the requested relief is consistent with the protection of investors and with the general purposes of the Act. Applicants state that the proposed additional investor is within the class of investors contemplated by section 2(a)(13). Applicants believe that ML & Co. has the community of interest with the existing classes of eligible participants for the KECALP Partnerships as contemplated for employees' securities companies by the Act.

4. ML & Co. has developed the KECALP program as a series of investment vehicles to generate and maintain goodwill by offering its directors, officers and key employees the opportunity to participate in investments that might otherwise by unavailable to them. Applicants submit that ML & Co.'s participation as a limited partner in a Partnership will only serve to further benefit the other limited partners. ML & Co.'s investment may significantly increase a Partnership's assets and thus provide economies for such Partnerships' expenses. In order to ensure that ML & Co.'s participation does not impair the influence that limited partners of a Partnership would otherwise enjoy, ML & Co. will vote its interest in a Partnership in identical proportions as the other limited partners in respect of any matter submitted for a vote of limited partners. In addition, the acquisition by ML & Co. of an interest in the Partnership will be disclosed to prospective limited partners in the prospectuses relating to the Partnerships' offerings.

5. Applicants believe that the terms of the relief requested are consistent with the protection of investors and with the general purposes of the Act. Except as amended herein, applicants will remain subject to the conditions of all prior orders of the SEC applicable to applicants.

Applicants' Conditions

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

1. In connection with Section 17(d) transactions, the General Partner and any general partner of any subsequent KECALP Partnerships will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person of the KECALP Partnership, or any affiliated person of such a person.

2. Each KECALP Partnership and its general partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the limited partners, and each annual report of the KECALP Partnership required to be sent to the limited partners, and

agree that all such records will be subject to examination by the Commission and its staff.

3. The General Partner and any general partner of any subsequent KECALP Partnership will send to each limited partner of such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the KECALP Partnership's independent accountants. At the end of each fiscal year, the General Partner and the general partner of each subsequent KECALP partnership will make a valuation or have a valuation made of all of the assets of such Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the KECALP Partnership. In addition within 90 days after the end of each fiscal year of each KECALP Partnership or as soon as practicable thereafter, the general partner of such KECALP Partnership will send a report to each person who was a partner at any time during the fiscal year, then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his or its Federal and state income tax returns and a report of investment activities of such Partnership during the year.

4. If purchases or sales are made by a KECALP Partnership from or to an entity affiliated with the KECALP Partnership by reason of a 5% or more investment in such entity by any director, officer or employee of ML & Co. and its subsidiaries, by any director, officer of the general partner of that KACALP Partnership, such individual will not participate in that general partner's determination of whether or not to effect such purchase or sale.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11740 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22649; 812–10564]

New USA Mutual Funds, Inc., et al.; Notice of Application

April 30, 1997.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: New USA Mutual Funds, Inc. (''New USA Co.'') on behalf of its series, New USA Growth Fund; New USA Research & Management Co. (''NURM''); O'Neil Data Systems, Inc. (''ODS''); and MFS Series Trust II (''MFS Series II''). on behalf of its series, MFS Emerging Growth Fund (''MFS Growth Fund'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants request an exemption from section 15(f)(1)(A) to permit ODS to sell its interest in NURM, the investment manager of the New USA Growth Fund, a series offered by New USA Co., to MFS. Without the requested exemption, MFS Series II would have to reconstitute its boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on March 11, 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 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 May 27, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: New USA Mutual Funds, Inc., New USA Research & Management Co., and O'Neil Data Systems, Inc., 12655 Beatrice Street, Los Angeles, California 90066; and MFS Series Trust II c/o MFS Emerging Growth Fund, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. New USA Co. is an open-end management investment company registered under the Act consisting of one series, the New USA Growth Fund. NURM is the investment manager of the New USA Growth Fund pursuant to an investment management agreement between New USA Co. and NURM (the ''Investment Advisory Agreement''). NURM's sole stockholder and parent company is ODS.

2. MFS Series II is an open-end management investment company registered under the Act consisting of four separate series (the ''MFS Series II Funds''), including the MFS Growth Fund. The MFS Growth Fund is part of the MFS family of funds, which consists of approximately 50 funds (collectively, the ''MFS Funds''). Massachusetts Financial Services Company (''MFS'') is the investment adviser to the MFS Growth Fund.

3. MFS Series II proposes to acquire the assets and liabilities of the New USA Growth Fund in exchange for shares of equal aggregate value of the MFS Growth Fund. In connection therewith, MFS will acquire all of the outstanding shares of the stock of NURM from ODS. The foregoing transactions are referred to as the ''Transaction.''

4. On March 6, 1997, ODS and MFS entered into a Stock Purchase Agreement (the ''Purchase Agreement'') pursuant to which, and subject to certain conditions, MFS agreed to purchase all of the outstanding capital stock of NURM. The consummation of the Purchase Agreement is subject to, among other things, the approval of the shareholders of the New USA Growth Fund of a plan of reorganization by and between New USA Co., on behalf of the New USA Growth Fund, and MFS Series II, on behalf of the MFS Growth Fund (the ''Reorganization Agreement'').

5. The MFS Series II board of trustees approved the Reorganization Agreement on December 11, 1996, and the New USA Co. board of directors unanimously approved it on March 4, 1997. The Reorganization Agreement provides for: (a) The acquisition by the MFS Growth Fund of substantially all of the assets and liabilities of the New USA Growth Fund in exchange for shares of the MFS Growth Fund; (b) the distribution of these MFS Growth Fund shares to the shareholders of the New USA Growth Fund in liquidation of the New USA Growth Fund; and (c) New USA Co.'s