

correct price by reference to an independently published list of closing sales prices for the date of the transaction, the Sponsor will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the trustee's corrected price, the Sponsor and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Investment companies under common control may be considered affiliates of one another. Each Series will have an identical or common Sponsor, Nike. Since the Sponsor of each Series may be considered to control each Series, it is likely that each Series would be considered an affiliate of the others.

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Under section 6(c), the SEC may exempt classes of transactions 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. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a-7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from, or sell securities, one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that

they will comply with all of the provisions of rule 17a-7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of each Series, as only securities that otherwise would be brought and sold on the open market pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees and is therefore contrary to the general purposes of the Act.

#### Applicants' Conditions

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

1. Each sale of Equity Securities by a Rollover Series to a New Series will be affected at the closing price of the securities sold on the applicable Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Series.

3. The trustee of each Rollover Series and New Series will (a) review the procedures discussed in the application relating to the sale of securities from a Rollover Series to a New Series and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a-7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a-7(f).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. IC-20949; 812-9442]

#### ML Venture Partners II, L.P. et al.; Notice of Application

March 9, 1995.

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

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** ML Venture Partners II, L.P. ("MLCP II"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), and Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ").

**RELEVANT ACT SECTIONS:** Order requested under section 57(c) from section 57(a)(2).

**SUMMARY OF APPLICATION:** Applicants request an order relating to the sale of shares of common stock of Corporate Express, Inc. by MLVP II in an underwriting in which Merrill Lynch and/or DLJ are members of the underwriting syndicate.

**FILING DATE:** The application was filed on January 20, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

**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 April 3, 1995, and should be accompanied by proof of service on the 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. MLCP II and Merrill Lynch, North Tower, World Financial Center, New York, New York 10281.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack-Matz, Senior Attorney, (202) 942-0570, or Robert A. Robertson, Branch Chief, (202) 942-0560 (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.

#### Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. MLVP II has five general partners, consisting of four individuals (the "MLVP II Individual General Partners") and one managing general partner, MLVP II Co. L.P. (the

"MLVP II Managing General Partner"). The MLVP II Individual General Partners include three MLVP II Independent General Partners (defined to be individuals who are not "interested persons" of MLVP II) and one general partner who is an individual and who is an affiliated person of the MLVP II Managing General Partner. The MLVP II Managing General Partner, is a limited partnership controlled by its general partner, Merrill Lynch Venture Capital Inc. (the "Management Company"). The Management Company, an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), performs, or arranges for the performance of, the management and administrative services necessary for the operation of MLVP II. On May 23, 1991, MLVP II, the MLVP II Managing General Partner, and the Management Company retained DLJ Capital Management Corporation (the "Sub-Manager"), an indirect wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., to provide management services in connection with the venture capital investments of MLVP II pursuant to a Sub-Management Agreement (the "Sub-Management Agreement"). Under the Sub-Management Agreement, the Sub-Manager is primarily responsible for the venture capital investments of MLVP II. The agreement provides that the Sub-Manager shall, subject to the overall supervision of the MLVP II Individual General Partner, "make all decisions regarding Venture Capital Investments and, among other things, find evaluate, structure, monitor and liquidate such investments."

2. Merrill Lynch, a Delaware corporation, is the principal subsidiary of ML & Co. ML & Co., a Delaware corporation, is a diversified financial services holding company which, through its subsidiaries, provides investment and financing, insurance, real estate, and related services.

3. DLJ, a Delaware corporation, is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., a holding company which through its subsidiaries engages in investment banking, merchant banking, public finance, trading, distribution, and research. Donaldson, Lufkin & Jenrette, Inc. is a subsidiary of The Equitable Companies Incorporated.

4. Corporate Express is a distributor of office supplies and products that it sells directly to large corporate customers. Corporate Express has expanded its operations significantly over the past three years and currently has annualized revenues in excess of \$600 million.

5. MLVP II made an initial investment in Corporate Express in May, 1992. At that time, MLVP II acquired 442,136 shares of common stock and 760,800 shares of Series A Convertible Preferred Stock for \$1,392,838 (\$0.22 per common share and \$1.70 per Series A Preferred Share). MLVP II acquired these shares from the Management Company pursuant to the terms and conditions contained in an SEC exemptive order dated May 11, 1992 (the "Blanket Exemptive Order") permitting co-investments between MLVP II and certain entities managed by DLJ Capital Corporation. In April, 1993, MLVP II acquired 153,450 shares of Series B Convertible Preferred Stock for \$537,075 (\$3.50 per share) in a follow-on investment in Corporate Express. MLVP II's follow-on investment in Corporate Express was made in accordance with the terms and conditions of the Blanket Exemptive Order.

6. On September 23, 1994, 7,500,000 shares of common stock of Corporate Express were offered to the public in an underwritten offering in which DLJ acted as a managing underwriter and Merrill Lynch acted as an underwriter. In connection with that offering, MLVP II exchanged its 914,250 Class A and B Preferred Shares for 914,250 shares of common stock of Corporate Express. At the same time, Corporate Express effected a one-for-two reverse split of its common stock. As a result of that split, MLVP II exchanged its 1,356,386 shares of common stock of Corporate Express for 678,193 shares of common stock. Since the initial public offering, the common stock of Corporate Express has traded in the NASDAQ National Market System ("NASDAQ"). In addition to the purchasers in the public offering and in subsequent secondary market transfers, the stockholders of Corporate Express include certain affiliates of DLJ, members of management and other employees of Corporate Express, and other institutional investors.

7. As of December 31, 1994, MLVP II owned 696,234 shares, or approximately 2.7%, of the outstanding common stock of Corporate Express. At such date, affiliates of DLJ (excluding MLVP II) owned 2,168,471 shares, or approximately 8.4%.

8. Although MLVP II has made no determination as to the time at which it would like to sell its investment in Corporate Express, MLVP II is now considering alternative methods of disposing of such investment.

#### **Applicants' Legal Analysis**

1. Applicants request an order under section 57(c) exempting from section 57(a)(2) sales of shares of common stock

of Corporate Express by MLVP II in underwritings in which Merrill Lynch and/or DLJ are members of the underwriting syndicate.<sup>1</sup>

2. Section 57(a)(2) prohibits certain affiliates of a business development company from purchasing any security or other property on a principal basis from the business development company or from any company controlled by the business development company, except securities of which the seller is the issuer. Section 57(b) provides, in part, that the affiliates affected by section 57(a) include any "person directly or indirectly either controlling, controlled by or under common control with" the business development company. Section 57(c) provides that a person may file an application with the SEC for an order exempting a proposed transaction from one or more provisions of section 57(a)(1) through (3), and that the SEC shall issue an order if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the business development company as recited in the filings made by such company with the SEC under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its report to shareholders or partners; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants believe that the Management Company is controlled by ML & Co. and that ML & Co. might be deemed to exercise and controlling influence over MLVP II and Merrill Lynch. Likewise, applicants believe that the Sub-Manager is controlled by Donaldson, Lufkin & Jenrette, Inc. and that Donaldson, Lufkin & Jenrette, Inc. might be deemed to exercise a controlling influence over MLVP II and DLJ. As a result of these affiliations, sales of securities on a principal basis by MLVP II to Merrill Lynch and/or DLJ are prohibited by section 57(a) and cannot be effected unless an order is issued under section 57(c).

<sup>1</sup> Applicants do not believe that the proposed transactions would constitute joint transactions under section 57(a)(4) and rule 17d-1 and therefore have not requested that the order include relief under that section and rule. Applicants recognize that the Commission expresses no opinion on this issue.

4. Applicants believe that the statutory standards set forth above will be satisfied with respect to the relief requested. In this connection, applicants believe that the structure of the proposed transaction has been designed to insure that the terms of the transaction will be fair and reasonable, will not involve overreaching on the part of any person concerned, and will eliminate the possibility of abuses of the potential conflict of interest. The terms of the proposed transaction provide that MLVP II will only sell shares in an underwritten offering in which Merrill Lynch and/or DLJ are members of the underwriting syndicate if certain conditions are met. The Sub-Manager for MLVP II must initially evaluate the proposed transaction and determine to recommend the sale of the investments.

5. The abuses that section 57(a)(2) is designed to deter are limited with respect to the proposed transactions. The shares of Corporate Express are traded on NASDAQ and the price to be paid for shares in an underwritten offering will approximate the trading price of such shares on NASDAQ less an underwriting discount. The underwriting terms with respect to MLVP II's sale of shares must be on the same terms applicable to any selling shareholder participating in the offering, including terms applicable to affiliates of ML & Co. and/or DLJ. The underwriting terms and arrangements, including the underwriting discount, will be reviewed and passed upon by the Individual General Partners, and separately by the Independent General Partners.

6. Liquidity in portfolio investments is becoming increasingly important as MLVP II approaches the ninth year of its ten year term. The ability to sell shares in an underwritten offering in which Merrill Lynch and/or DLJ are acting as underwriters may provide liquidity not otherwise available to MLVP II. Due to its affiliation with Corporate Express through Merrill Lynch, sales by MLVP II in the public market of shares of Corporate Express are subject to the volume limitations contained in rule 144 under the Securities Act of 1933. In addition, because DLJ acted as managing underwriter for Corporate Express in its initial public offering, it is likely that DLJ will be the managing underwriter or otherwise a member of the underwriting syndicate in future offerings of such company's securities. Thus, in the absence of the requested relief, MLVP II will be at a substantial disadvantage because it will be unable to liquidate its holdings at a time when other institutional investors in Corporate Express are selling shares in an

underwritten offering for which Merrill Lynch and/or DLJ are members of the underwriting syndicate.

7. MLVP II believes that the relief requested is consistent with its purpose, its stated policies and the disclosure made to its prospective investors. Applicants also believe that the proposed transactions are in the best interests of MLVP II to the extent that such transactions permit MLVP II to liquidate portfolio securities on favorable terms and in a more expedited manner than would otherwise be available.

#### **Applicants' Conditions**

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

1. If MLVP II is offered the opportunity to sell shares of common stock of Corporate Express in an underwritten offering in which Merrill Lynch and/or DLJ is a member of the underwriting syndicate, the Sub-Manager will review the terms of the proposed offering. The Sub-Manager will provide a written report to the independent General Partners which will set forth the Sub-Manager's recommendation as to whether MLVP II should sell shares in such underwritten offering based on the Sub-Manager's analysis of all factors it deems relevant, including the terms of the proposed underwritten offering.

2. MLVP II will be given the opportunity to sell shares in such underwritten offering on at least a proportionate basis with affiliates of DLJ and ML & Co. (if any), and on the same terms applicable to any selling shareholders participating in the offering, including terms applicable to affiliates of DLJ and ML & Co. (if any) selling shares in such offering. In this regard, the underwriting discount with respect to such offering will be no larger than the customary underwriting discount charged by underwriters for equity securities in similar transactions.

3. MLVP II will only participate in such underwritten offering if the shares to be sold continue to be traded on NASDAQ or are listed on a national securities exchange, as of the date of the offering and if the offering price is determined by reference to, and approximates, the price of the shares on NASDAQ, or a national securities exchange, at the time the offering price is determined.

4. The underwriting terms and arrangements with respect to the proposed transaction must be determined by the Individual General Partners, and a majority of the

Independent General Partners, to be fair and reasonable.

5. If the Sub-Manager, on the basis of its evaluation described above, recommends that MLVP II sell shares in such underwritten offering, the Individual General Partners shall then determine whether, in their view, it is in the best interests of MLVP II to sell shares in such underwritten offering. MLVP II shall only sell shares in such underwritten offering if the Individual General Partners, including a majority of the Independent General Partners, determine that:

(i) the terms of the proposed transaction, including the consideration to be paid to MLVP II, are reasonable and fair and do not involve overreaching of MLVP II or its partners on the part of any person concerned;

(ii) the proposed transaction is consistent with the policies of MLVP II as indicated in its filings under the Securities Act of 1933 and the Securities Exchange Act of 1934, and its reports to its partners; and

(iii) participation by MLVP II in the proposed transaction is in the best interests of the partners of MLVP II.

6. MLVP II will maintain the records required by section 57(f)(3) of the Act as if each of the transactions permitted under these conditions were approved by the Independent General Partners under section 57(f) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

#### **Notice of Public Meeting and Request for Information on the Centralization and Computerization of DOT Dockets**

**AGENCIES:** The Office of the Secretary (OST), the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the Maritime Administration (MARAD), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the United States Coast Guard (USCG), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** DOT is consolidating its nine separate docket facilities into a single, central office, and initiating a transition