investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. IL Annuity represents that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon IL Annuity's analysis of publicly available information about comparable industry products, taking into consideration such factors as annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by IL Annuity with respect to the Contracts, the means of promotion, the market for the Contracts, investment options under the Contracts, purchase payment, transfer, dollar cost averaging and automatic account balancing features, and the tax status of the Contracts. IL Annuity represents that it will maintain at its home office, a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative review.

4. Prior to issuing any Other Contracts, Applicants will determine that the mortality and expense risk charge under any Other Contracts is within the range of industry practice for comparable contracts. IL Annuity represents that the basis for this conclusion will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.[1]

5. IL Annuity acknowledges that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the Withdrawal Charge. IL Annuity represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the IL Annuity Account and Contract owners. IL Annuity represents that the basis for that conclusion is set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

6. Prior to issuing any Other Contracts, Applicants will determine that there is a reasonable likelihood that the proposed distribution financing arrangement for any Other Contracts will benefit the IL Annuity Account or any Other Separate Account and Contract owners. IL Annuity represents that the basis for this conclusion will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.[2]

7. Applicants assert that the terms of the future relief requested with respect to Other Separate Accounts, Other Contracts and Future Underwriters are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants submit that, if IL Annuity were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit. Applicants assert that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants represent that both the delay and the expense of repeatedly seeking exemptive relief would impair IL Annuity's ability to effectively take advantage of business opportunities as they arise.

8. IL Annuity also represents that the IL Annuity Account or any Other Separate Accounts will invest only in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not ''interested persons'' of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

## Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are 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 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–14471 Filed 6–13–95; 8:45 am]

**BILLING CODE 8010–01–M**

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[2] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

**[Release No. IC–21124; 813–138]**

## Merrill Lynch KECALP L.P. 1994 and KECALP Inc.; Notice of Application

June 8, 1995.

**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. 1994 (the ''1994 Partnership'') and KECALP Inc. (the ''General Partner'').

**RELEVANT ACT SECTIONS:** Order requested under sections 6(b) and 17(b) from section 17(a).

**SUMMARY OF APPLICATION:** Applicants request an order which would let the General Partner sell to future partnerships certain investments that were purchased and held by the General Partner on behalf of a future partnership prior to the closing of such partnership's initial offering. The order also would let the General Partner sell to the 1994 Partnership four investments that the General Partner has purchased and is holding as nominee for the 1994 Partnership.

**FILING DATES:** The application was filed on November 10, 1994, and was amended on February 22, 1995, May 31, 1995, and June 7, 1995.

**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 July 3, 1995 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 request, 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 N.W., Washington, D.C. 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. The 1994 Partnership is a Delaware limited partnership registered under the Act as a closed-end management investment company. The 1994 Partnership is an ''employees' securities company,'' as defined in section 2(a)(13) of the Act, and operates under the terms of an order issued in 1982 (the ''1982 Order'') that exempts under section 6(b) of the Act the Merrill Lynch KECALP Ventures Limited Partnership 1982, and future similar limited partnerships in which Merrill Lynch & Co., Inc. (''ML & Co.'') is a general partner, from certain provisions of the Act to the extent necessary to permit the partnerships to function as employees securities companies.[1] Interests in the 1994 Partnership were offered to certain employees of ML & Co. and its subsidiaries, and to non-employee directors of ML & Co. The General Partner may organize additional limited partnerships for employees of ML & Co. and its subsidiaries. Applicants request that the relief sought herein apply to these future KECALP partnerships, which will operate under the terms of the 1982 Order (each, a ''Future Partnership;'' together with the 1994 Partnership, the ''Partnerships'').

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. All investments and dispositions of investments by the Partnerships are approved by the board of directors of the General Partner.

3. Applicants request an amendment to the 1982 Order to allow the General Partner, ML & Co., and direct or indirect wholly-owned subsidiaries of ML & Co. (together, ''ML'') to acquire and hold certain investments (''Warehoused Investments'') on behalf of a Future Partnership pending the closing of the Partnership's initial offering. An investment will only qualify as a Warehoused Investment where (a) ML acquires an investment on behalf of a Future Partnership with the intention of selling such investment to the Future Partnership following the completion of its initial offering, and (b) the board of directors of the General Partner approves such investment. ML may sell a Warehoused Investment to a Partnership only during the lesser of (a) one year from the time ML purchases the Warehoused Investment, or (b) 30 days from the date of closing of a Partnership's initial offering.

4. The purchase price to be paid by the Partnership to ML for a Warehoused Investment will be the lesser of (a) the fair value of the Warehoused Investment on the date it is acquired by the Partnership or (b) the cost to ML of purchasing the Warehoused Investment. ML may only charge the Partnership carrying costs to the extent the fair value of the Warehoused Investment exceeds the cost, and such costs will accrue from the date ML acquires the Warehoused Investment on behalf of the Partnership. Carrying costs will consist of interest charges computed at the lower of (a) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are being paid or (b) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual ''Average Cost of Funds,'' which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

5. Applicants are subject to an order issued in 1991 (the ''1991 Order'')[2] that, in relevant part, allows ML to acquire ''Merrill Lynch Investments''[3] on behalf of a KECALP partnership, and sell such investments to the partnership within 30 days of ML's acquisition of such investments. To the extent ML acquires on behalf of a KECALP partnership investments that are not Merrill Lynch investments, and that are not sold to the partnership within 30 days of ML's purchase, the partnership must obtain exemptive relief from the Commission prior to acquiring the Warehoused Investment.

6. Applicants also request an order under section 17(b) of the Act exempting them from section 17(a) in order to permit the General Partner to sell to the 1994 Partnership four investments that the General Partner has purchased and is holding as nominee for the 1994 Partnership. Applicants also request that the General Partner be permitted to recover carrying costs related to such investments, to the extent that the fair value of a Warehoused Investment on the date it is acquired by the 1994 Partnership exceeds the cost to the General Partner of purchasing and holding such investment. Each of the four Warehoused Investments was acquired by the General Partner, and upon receipt of the requested order, will be acquired by the 1994 Partnership, in accordance with the conditions to the requested order, as described below.

*A. ZML Partners Limited Partnership III (''Zell III'')*

1. Zell III is a limited partnership formed to act as the managing general partner of Zell/Merrill Lynch Real Estate Opportunity Partners Limited Partnership III (the ''Zell Fund''). The Zell Fund is a limited partnership formed to acquire a high quality, geographically diversified portfolio of real estate assets. Zell III has committed to invest up to $25 million in the Zell Fund. The Zell Fund closed its initial offering in March 1994 with aggregate capital commitments of approximately $680 million. On March 10, 1994, the General Partner funded $600,000 of its $2.0 million commitment in return for an 8% limited partnership interest in Zell III, held on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and receipt of the requested order. Upon its acquisition of the investment in Zell III, the 1994 Partnership will be allocated generally its proportional share of all items of income, loss and gain, and its proportional share of distributions, received by Zell III from its investment in the Zell Fund.

2. The proposed investment in Zell III involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1982 Order. Because the 1982 Order does not provide relief to allow the General Partner to sell Warehoused Investments to the Partnerships, and because the investment in Zell III is not a Merrill Lynch Investment within the meaning of the 1991 Order, applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership.

*B. Gemini Holdings, Inc. (''Gemini'')*

1. PCA Holding Corporation (''Holding'') is an acquisition vehicle created to acquire PC Accessories, Inc. (''PCA''), a distributor of computer accessory products. On July 28, 1994, the General Partner acquired 119,000 shares of Holding's common stock at

[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, Investment Company Act Release Nos. 18082 (Apr. 8, 1991) (notice) and 18137 (May 7, 1991) (order).

[3] ''Merrill Lynch Investments'' consist of equity and equity-related transactions in (a) companies that are the subject of transactions commonly referred to as ''leveraged'' or ''management'' buyouts (''Buyouts'') structured by ML & Co. or an affiliate, or Buyouts with respect to which ML & Co. or an affiliate assisted in the transaction and/or (b) companies that are the subject of other transactions structured by ML & Co.'s investment banking group. In either case, ML & Co. or an affiliate must hold a long-term equity or equity-related investment as part of the transaction.

$10 per share for an aggregate of $1.19 million on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and the receipt of the requested order. At the same time, Merrill Lynch KECALP L.P. 1991 (''KECALP 1991'') also acquired 119,000 shares of Holding's common stock at $10 per share for an aggregate of $1.19 million.

2. PCA was subsequently merged into Gemini, a producer and marketer of accessories for home electronic and entertainment systems. As a result of the merger, shares of PCA held by the General Partner on behalf of the 1994 Partnership were converted into 52,479 shares of Gemini's cumulative convertible preferred stock. At such time, KECALP 1991's shares of Holding were likewise converted into 52,479 shares of Gemini's cumulative convertible preferred stock.

3. The proposed investment in Holding involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1991 Order. Applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership. The 1991 Order does not provide the necessary relief from section 17(a) because the 1994 Partnership will acquire the Warehoused Investment more than 30 days after its purchase by the General Partner.

*C. Mail-Well Holdings, Inc. (''Mail-Well'')*

1. Mail-Well is a manufacturer of customized envelopes and related packaging products. In February 1994, the General Partner acquired 84,112 shares of Mail-Well's common stock at a cost of $10.70 per share for an aggregate of $899,998 on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and the receipt of the requested order. At the same time, KECALP 1991 likewise acquired 84,112 shares of Mail-Well's common stock at a cost of $10.70 per share for an aggregate of $899,998.

2. The proposed investment in Mail-Well involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1991 Order. Applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership. The 1991 Order does not provide the necessary relief from section 17(a) because the 1994 Partnership will acquire the Warehoused Investment more than 30 days after its purchase by the General Partner.

*D. Westlink Holdings, Inc. (''Westlink'')*

1. Westlink is a telephone paging company formed in 1994 to acquire the Westlink Company. In July, 1994, the General Partner acquired 200,000 shares of Westlink's common stock for $10 per share for an aggregate of $2.0 million on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and the receipt of the requested order. At the same time, KECALP 1991 acquired 100,000 shares of Westlink's common stock for $10 per share for an aggregate of $1.0 million.

2. The proposed investment in Westlink under section 17(d) involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1991 Order. Applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership. The 1991 Order does not provide the necessary relief from section 17(a) because the 1994 Partnership will acquire the Warehoused Investment more than 30 days after its purchase by the General Partner.

**Applicant's Legal Analysis**

1. Section 6(b) authorizes the Commission, upon application, to 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. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities, from the company.

2. The General Partner is an indirect, wholly-owned subsidiary of ML & Co. Thus, ML & Co. and each of its direct or indirect wholly-owned subsidiaries is an ''affiliated person'' of the General Partner, within meaning of section 2(a)(3)(C). In addition, the General Partner is an ''affiliated person'' of the Partnerships, within the meaning of section 2(a)(3)(D). As a result of these affiliations, ML is prohibited from selling securities to the Partnerships, and the Partnerships are prohibited from buying such securities, unless applicants obtain an exemptive order.

3. Applicants believe that the terms of the requested order are consistent with the standards set forth in sections 6(b) and 17(b). Applicants submit that the conditions to the requested order are designed to insure that sales of Warehoused Investments by ML to the Partnerships are consistent with the protection of the Partnerships' limited partners. Applicants are aware of the policies underlying section 17(a), and the potential conflicts that could arise in connection with the Partnerships' purchase of Warehoused Investments from ML. Applicants submit that the conditions to the requested order effectively address these concerns.

**Applicant's Conditions**

Applicants agree that the terms of relief are subject to the following conditions:

1. In order for an investment to qualify as a Warehoused Investment to be purchased pursuant to the requested relief, (a) the board of directors of the General Partner must approve such investment for the Future Partnership in the same manner in which the board would approve an investment for such Partnership prior to the time the investment is acquired by ML and (b) such investment must be acquired by ML with the intention of acquiring the Warehoused Investment for the Future Partnership and selling it to such Partnership after the completion of its initial offering. The General Partner will maintain at the Partnerships' office written records stating the General Partner's intention in acquiring such security, and stating the factors considered by the General Partner's board of directors in approving the investment.

2. Once the limited partners have contributed their capital to a Partnership, prior to the acquisition of a Warehoused Investment by the Partnership, (a) the board of directors must make the following findings: (i) The terms of the Warehoused Investment, including the consideration to be paid, are reasonable and fair and do not involve overreaching of the Partnership or its Partners on the part of any person concerned, (ii) the proposed transaction is consistent with the policy of the Partnership as indicated in its filings under the Securities Act of 1933 and its reports to Partners, and (iii) participation by the Partnership in the proposed transaction is in the best interest of the Partners of the Partnership; and (b) with respect to any Warehoused Investment that is part of a co-investment with an affiliate, the board of directors must approve the investment in accordance with the terms of any orders issued by the Commission that are applicable to such co-investment, including the required findings by the board of directors of the General Partner. The General Partner will maintain at the Partnerships' office written records of the factors considered in any decision regarding a Warehoused Investment.

3. The purchase price to be paid by the Partnership for a Warehoused

Investment shall be the lesser of (a) the fair value of the securities on the date acquired by the Partnership as determined by the General Partner or (b) the cost to ML of purchasing the Warehoused Investment (''Cost''). Carrying costs may be paid by the Partnership to ML to the extent such fair value exceeds Cost. To the extent the value of the securities is determined to be less than Cost, ML may determine not to sell the Warehoused Investment to the Partnership. The General Partner will maintain at the Partnerships' office written records of the factors considered in any determination regarding the value of a Warehoused Investment.

4. Carrying costs shall be calculated from the date ML acquired the proposed investment on behalf of the Partnership to the date of the acquisition of the proposed investment by the Partnership from ML, and shall consist of interest charges computed at the lower of (a) the prime commercial lending rate charged by Citibank, N.A., during the period for which carrying costs are permitted to be paid until the Partnership acquires the securities or (b) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual ''Average Cost of Funds,'' which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

5. The Partnership may only acquire a Warehoused Investment from ML during the lesser of (a) one year from the time ML purchases the Warehoused Investment or (b) 30 days from the date of closing of the Partnership's initial offering.

6. The General Partner will maintain the records required by section 57(f)(3) of the Act and will comply with the provisions of section 57(h) of the Act as if each Partnership were a business development company. All records referred to or required under these conditions will be available for inspection by the limited partners of each Partnership and the Commission.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–14472 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

**[Rel. No. IC–21125; 811–5513]**

## Vision Fiduciary Funds, Inc.; Notice of Application

June 8, 1995.

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

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** Vision Fiduciary Funds, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATES:** The application was filed on March 7, 1995, and amended on May 26, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Federated Investors Tower, Pittsburgh, PA 15222–3779.

**FOR FURTHER INFORMATION CONTACT:** James M. Curtis, Senior Counsel, at (202) 942–0563, or C. David Messman, 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.

### Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a corporation under the laws of Maryland. On March 14, 1988, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on March 14, 1988, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to issue an indefinite number of shares. Applicant's registration statement was declared effective on May 26, 1988, and applicant commenced its initial public offering on June 1, 1988. Manufacturers and Traders Trust Company is applicant's investment adviser (the ''Bank'').

2. Applicant was created as a separate investment vehicle for fiduciary accounts of the Bank. The Bank later determined that, under certain circumstances, banking law permitted the joint investment of the Bank's fiduciary accounts with its non-fiduciary accounts in a portfolio of Vision Group of Funds, Inc., that was created for the general public rather than in a separate investment company portfolio.

3. On November 8, 1994, applicant's board of directors authorized the dissolution of applicant, conditioned on the redemption of all applicant's shares.

4. As of December 27, 1994, applicant had 88,342,953.98 shares outstanding at a net asset value of $1.00 per share. Applicant's portfolio securities were sold to the Vision Group Money Market Fund pursuant to rule 17a–7 on or before December 28, 1994, and no brokerage commissions were paid. On December 28, 1994, all shares were voluntarily redeemed by applicant's shareholders. Each shareholder received his or her proportionate share of applicant's net assets.

5. On December 30, 1994, Federated Services Company, as applicant's sole shareholder, authorized applicant's dissolution by unanimous written consent.

6. Applicant's distributor paid all liquidation expenses incurred. Applicant believes that these costs, which included legal fees, record keeping expenses, and custodian fees, were immaterial.

7. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

8. On March 21, 1995, the Maryland Department of Assessments and Taxation received and accepted applicant's Articles of Dissolution.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–14540 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M