significant effects on the national securities markets.

10. Applicant submits that the SEC also has exempted NRSROs because the SEC determined that their activities have a significant effect on the national securities markets and the operations of the federal securities laws.[8] Applicant also notes that certain pension consultants are exempt from the prohibition on SEC registration because the SEC determined that their activities have a direct effect on the management of billions of dollars of pension plan assets and thereby substantially affect national securities markets.[9] Applicant states that the SEC determined to exempt these advisers because of its belief that it would be inconsistent with the purposes of the Coordination Act for these advisers to be regulated by the states rather than by the SEC.

11. Applicant believes that New York should have little or no interest in regulating applicant because the majority of its clients for the Fixed Income Pricing Service are institutional clients. Applicant asserts that its client base for the Fixed Income Pricing Service is overwhelmingly institutional; less than 10% of applicant's total number of clients for the Fixed Income Pricing Service are natural persons. Applicant states that it would be inconsistent with the purposes of section 203A for a state to regulate investment advisers whose activities involve little or no traditional state interest. Applicant submit that there is no strong state interest in regulating investment advises with a predominately national, institutional client base.

12. Applicant states that, although the Coordination Act generally preempted state law with respect to SEC-registered advisers, Congress preserved state law with respect to certain of their supervised persons referred to as ''investment adviser representatives.'' Applicant notes that under the SEC definition, only investment adviser representatives who work principally with natural person clients rather than institutional clients are subject to state regulation. Applicant states that this definition recognizes that, consistent with the Coordination Act, the primary interest of the states is not in institutional clients but in maintaining oversight of representatives with a retail clientele.

13. Applicant states that if it were to be regulated by New York, rather than by the SEC, it would mean that a single state would be charged with protecting the interests of applicants's clients and of the clients' customers located in all fifty states. Applicant further maintains that regulation by New York could result in regulation with an eye primarily to the interests of the state rather than the interests of applicant's clients and such clients' customers throughout the country. Applicant asserts that the nature of its activities in valuing securities lends itself to supervision and examination by one regulatory body whose focus is national rather than local.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32652 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

[8] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1601 (Dec. 20, 1996), 61 FR 68480 at Section II.D.1 (release proposing rules to implement amendments to the Advisers Act).

[9] The exempted pension consultants are those that provide investment advice to employee benefit plans with respect to assets having an aggregate value of at least $50 million during the pension consultant's last fiscal year. *See id.* at Section II.D.2.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22930/812–10836]

MLX Corporation; Notice of Application

December 9, 1997.

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

ACTION: Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant requests an order under sections 6(c) and 6(e) of the Act that would exempt it from all of the provisions of the Act except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f) (modified as discussed in the application), and 36 through 53 and the rules and regulations under the Act until the earlier of the date of the pending merger of applicant with Morton Metalcraft Holding Co., or June 30, 1998.

FILING DATE: The application was filed on October 27, 1997 and amended on December 3, 1997. Applicant has agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

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 December 29, 1997, 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 Fifth Street, NW., Washington, DC 20549. MLX Corporation, 1000 Center Place, Norcross, Georgia 30093.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, 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, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representation

1. MLX Corporation (''MLX'') was formed in 1984 as part of the reorganization of McLouth Steel Company (''McLouth''), a maker of steel products that filed for bankruptcy in 1982. Under the terms of the organization, McLouth was renamed ''MLX Corporation'' and McLouth shares were exchanged for new MLX shares. As part of the reorganization, McLouth's operating business was sold to a separate entity. MLX's sole remaining asset is the net operating losses generated by McLouth's unprofitable operations. These net operating losses are still available to offset future taxable income from operations and are one of MLX's most important assets. MLX has approximately 8,500 shareholders.

2. In 1985, MLX acquired S.K. Wellman Limited, Inc. (''Wellman''), a company engaged in the design and manufacture of high energy friction materials used primarily in aircraft brakes and heavy equipment brakes, transmissions, and clutches (the ''Wellman Business''). From 1985 through 1987, MLX consummated various other acquisitions that complemented the Wellman Business (the ''Wellman Acquisitions''). In addition to the Wellman Acquisitions, in 1986, 1987, and 1988, MLX acquired

the companies and assets comprising Pameco Corporation (''Pameco''), a distributor of heating and air conditioning units. In 1992, MLX sold Pameco, which enabled MLX to focus its efforts exclusively on the Wellman Business.

3. In August 1994, a foreign competitor approached MLX management with an unsolicited expression of interest in a business combination with Wellman. This led to negotiations for the sale of all the capital stock of its wholly-owned subsidiary, Wellman (the ''Wellman Transaction''). The Wellman Transaction, which closed June 30, 1995, left MLX with approximately $38 million in cash and cash equivalents, no debt, and federal net operating loss carryforwards (''NOLs'') of approximately $300 million available to offset future taxable income from operations.

4. Since the Wellman Transaction, MLX has been engaged in the process of identifying and evaluating potential acquisition candidates for the purpose of acquiring a suitable operating business as soon as reasonably possible. MLX's president and chief executive officer, the only officer and one of only two employees, spends substantially all of his time seeking acquisition candidates for MLX. In addition, MLX's other employee spends substantially all of her time supporting the activities of MLX's president and attending to the ministerial functions of operating the company. MLX has developed financial and operational criteria as a basis for evaluating prospective target businesses and for narrowing the focus of its search. MLX's executive officers and board of directors have been in constant communications with professional groups, including investment bankers, lenders, attorneys and accountants (collectively ''Financial Intermediaries'') for the purposes of discussing MLX's acquisition criteria and exploring acquisition opportunities. MLX has discussed its acquisition criteria directly with over fifty Financial Intermediaries. Three Cities Research, Inc. (''Three Cities''), a New York investment banking firm that owns approximately 39% of MLX's outstanding common stock, has assisted MLX in identifying, evaluating and negotiating potential acquisitions. In addition, MLX has engaged, on a non-exclusive basis, the investment banking firm of Smith Barney to canvas the market of businesses for sale and analyze these against MLX's acquisition criteria.

5. On May 19, 1997, MLX was granted an order (the ''Existing Order'') exempting it from most of the provisions of the Act during the period from the date of the Existing Order to December 31, 1997.[1] However, in spite of its efforts, MLX has been unable to complete the acquisition of an operating business. MLX has recently signed a definitive merger agreement (the ''Pending Merger'') with Morton Metalcraft Holding Co. (''Morton''), a leading contract manufacturer and supplier of high quality fabricated sheet metal components and sub-assemblies for construction, agricultural, and industrial equipment manufacturers. Preliminary proxy materials seeking shareholder approval for the Pending Merger were filed with the SEC on October 21, 1997.

6. MLX currently has NOLs of approximately $275 million available to offset future taxable income from operations. In order for MLX to retain its NOLs after the Pending Merger, section 382 of the Internal Revenue Code of 1986, as amended (''Section 382'') requires existing MLX shareholders to own 50% or more of the equity in MLX after the Pending Merger. However, William D. Morton (''Mr. Morton''), President and Chief Executive Officer of Morton, stated that he would only consider a transaction which he would obtain voting control of the entity resulting from the Pending Merger. In order to give Mr. Morton effective voting control of MLX after the Pending Merger (i) MLX is proposing that its shareholders approve a recapitalization that will be structured to avoid an ownership change within the meaning of Section 382 (the ''Recapitalization'') and (ii) the transactions associated with the Pending Merger, which includes a shareholders agreement and a voting agreement, must be consummated (the ''Related Transactions'').

7. Under the Recapitalization, all existing common stock of MLX will be re-classified as MLX Class A Common Stock (''Class A Common Stock'') and a new class of 200,000 Shares of MLX Class B Common Stock (''Class B Common Stock'') will be created. Certain affiliates of Three Cities (''TCR Affiliates'') will own 100,000 shares of Class B Common Stock. Class A Common Stock and Class B Common Stock will have equal rights with respect to dividends and liquidation participation.[2] Shareholders of Class A Common Stock and Class B Common Stock will vote as a single class on all matters with each share of Class A Common Stock entitled to one vote and each share of Class B Common Stock entitled to one vote per share and increasing votes per share as the shareholder disposes of certain shares[3] of Class A Common Stock.

8. Following the Pending Merger, Mr. Morton will own 1,218,990 shares of Class A Common Stock and 100,000 shares of Class B Common Stock. TCR Affiliates will own 888,178 shares of Class A Common Stock and 100,000 shares of Class B Common Stock. As Mr. Morton and TCR Affiliates sell their shares of Class A Common Stock, the special voting rights of the Class B Common Stock will ensure that Mr. Morton's voting rights and the TCR Affiliates' voting rights will not be reduced below 24%. Thus, after the Recapitalization and Pending Merger, Mr. Morton and the TCR Affiliates together will have 56.5% of the voting rights of MLX common shares.

9. In connection with the Pending Merger, Mr. Morton and TCR Affiliates entered into a shareholders agreement (the ''Shareholders Agreement'') whereby the benefits of the potential voting rights of Class B Common Stock enure entirely to Mr. Morton. Under the terms of the Shareholders Agreement, TCR Affiliates will grant Mr. Morton a proxy to vote all of the Class A Common Stock and the Class B Common Stock owned by TCR Affiliates. The proxy will cover all matters to be voted upon by MLX's shareholders after the Pending Merger except for the liquidation of MLX, and sale of MLX's assets, and certain mergers.[4]

10. In connection with the Pending Merger, TCR Affiliates and Morton have also entered into a voting agreement (the ''Voting Agreement'') under which TCR Affiliates have agreed that at any meeting of the MLX shareholders, TCR Affiliates will vote all the shares of MLX common stock owned by them in favor of (i) the Recapitalization, (ii) the Pending Merger, and (iii) a new employee stock option plan and each of the other actions contemplated by or

[1] Investment Company Act Release Nos. 22626 (Apr. 21, 1997) (notice) and 22667 (May 19, 1997) (order).

[2] Each share of Class B Common Stock will be convertible, at the option of its holder, into one share of Class A Common Stock. Each share of Class B Common Stock will automatically convert into one share of Class A Common Stock (i) upon its sale or transfer to a party unaffiliated with Mr. Morton or the TCR Affiliates and (ii) on the tenth anniversary of the effective date of the Pending Merger.

[3] Mr. Morton's voting power will also be increased by 338,990 shares of Class A Common Stock that are not taken into account in calculating the voting power of his Class B Common Stock.

[4] In another Related Transaction, MLX has entered into a securities purchase agreement with certain holders of Morton common stock, options, and warrants whereby MLX will purchase shares of Morton common stock, options, and warrants. The Morton securities purchased by MLX will be cancelled by the Pending Merger.

required in furtherance of such transactions.

11. Until the Pending Merger, a substantial majority of the potential acquisitions were rejected by MLX because of valuation issues. In other instances, MLX was outbid for the target. As of September 30, 1997, MLX had evaluated 225 transactions and made thirty-one offers or valuation proposals. If for any reason, the Pending Merger is not consummated, MLX plans to continue to be engaged in the process of identifying and evaluating potential acquisition candidates for the purpose of acquiring a suitable operating business as soon as reasonably possible.

12. MLX states that there is no assurance that the Pending Merger will be completed, if at all, by December 31, 1997. Accordingly, it is necessary for MLX to seek a new order extending the time period of the Existing Order. MLX requests an order under sections 6(c) and 6(e) of the Act exempting it from all the provisions of the Act except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f) (modified as discussed in the application), and 36 through 53 and the rules and regulations under the Act until the earlier of the date of the Pending Merger or June 30, 1998. MLX also requests a limited and specific exemption for the same time period (i) under section 6(c) for an exemption from section 17(f) to permit MLX to continue its present custodial arrangement, (ii) under rule 17d–1 to grant an exemption from section 17(d) to permit MLX to maintain, operate and comply with its stock option plans and agreements, and (iii) under section 17(b) and rule 17d–1 for an exemption from section 17(a) and section 17(d), respectively, to permit MLX and TCR Affiliates to consummate the Pending Merger and Related Transactions.

13. MLX's NOLs represent substantial value that may only be maximized by acquiring a profitable operating company at a fair price. The NOLs expire as follows: $144.3 million in 1997; $1.2 million in 1998; $73.8 million in 1999; $2.7 million in 2000; $2.2 million in 2002; $5.0 million in 2005; $2.0 million in 2006 and $47.3 million in 2007. The existence of the NOLs, together with their expiration schedule, provide MLX with a strong incentive to close the acquisition of a profitable operating business as soon as possible. Though currently in transition, MLX expects to have acquired an operating business by no later than June 30, 1998 or sooner if the Pending Merger is completed. In the event that MLX is unable to acquire an operating business by June 30, 1998, MLX's board of directors will consider the alternatives available, including registration as an investment company or dissolution. These alternatives would be considered in advance of June 30, 1998 in order to allow sufficient time for the implementation of any board decision.

14. Since the Wellman Transaction, MLX's revenues have been derived from the investment of substantially all of its assets in overnight repurchase agreements collateralized by United States Treasury and agency securities. MLX's overnight repurchase agreement investment program (the ''Program'') is administered by five large national banks approved by MLX's board of directors. The Program is designed to: (a) Maximize safety of capital, (b) assure availability of funds for the purpose of consummating an acquisition, and (c) relieve MLX management of the time-consuming management of those funds.

15. Access to MLX's funds is severely restricted. MLX has one operating account for the purpose of executing routine operating disbursements and business expenses, including salaries, rent and taxes. The maximum amount of funds deposited in the account is limited to no more than the anticipated expense level for the upcoming two months, based on MLX's budget as approved by the board of directors. Any disbursements from the operating account must be approved by the chief executive officer and the account is reconciled on a monthly basis. In addition, MLX's board of directors receives a monthly summary report of expenses.

16. Five national banks invest the remainder of MLX's funds as part of the Program, each of which is responsible for approximately equal portions of $7 million. MLX's board of directors has designated First Union National Bank as the primary bank. The non-primary banks are Wachovia Bank of Georgia, National Bank, SunTrust Bank, and National Bank of Detroit. All five banks are United States regulated banks and meet the qualifications prescribed in section 26(a)(1) of the Act. The non-primary banks have been instructed in writing to wire money only to MLX's account at First Union National Bank and not to any other person or entity. In addition, MLX's agreements with all of the banks (''Bank Agreements'') contain provisions requiring the banks to segregate and identify all securities owned by MLX as subject to the respective Bank Agreement.

17. Transfers from any non-primary bank investment account in any amount must be approved by an MLX executive officer and the Funds Management Committee of the board of directors, and primary account transfers (including check disbursements) in amounts above $5,000 must be approved by an MLX executive officer and a member of the Committee. In addition, the bank must verify the authenticity of the wire transfer request by voice verification with a second, non-initiating MLX officer in a phone call initiated by the bank. MLX also has secured an executive protection policy from the Chubb Group of Insurance Companies insuring MLX for, among other things, losses of money, securities and other property caused by theft or forgery by any employee or agent of MLX or by any other person in an amount not to exceed $5 million.

18. MLX has two stock option plans. Under the MLX Corporation Stock Option Plan, adopted in 1985 (the ''1985 Plan''), MLX granted stock options to certain officers, directors and key employees at prices not less than the market value on the date the options were granted. No new options may be granted under the 1985 Plan, although some options are still outstanding. Under the MLX Corporation Stock Option and Incentive Award Plan, adopted in 1995 (the ''1995 Plan''), stock-based awards may be issued to key employees (including directors who are also employees) and certain others. The awards may include incentive stock options, non-qualified stock options, restricted stock, and outright stock awards. A total of 125,000 shares of MLX common stock are reserved under the 1995 Plan. In addition, on February 11, 1991, MLX issued options to Brian R. Esher, its then Chief Executive Officer and currently a director of MLX, to acquire 190,400 shares of MLX common stock at a price of $5.00 per share, exercisable (subject to vesting schedules which have been satisfied) at any time prior to February 10, 1998. Mr. Esher's options were converted to stock appreciation rights and exercised as of February 28, 1997. On October 3, 1993, December 29, 1994 and July 26, 1995, MLX issued options to Thomas Waggoner, its then Chief Financial Officer and current Chief Executive Officer, to acquire 50,000 shares of MLX common stock at prices ranging from $2.20 to $9.25 per share, exercisable at any time prior to July 25, 2000. It is also possible for Mr. Waggoner's options to be converted to stock appreciation rights.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company as an issuer who is engaged or proposes to engage in the business of investing, reinvesting,

owning, holding, or trading in securities and owns investment securities having a value in excess of 40% of the issuer's total assets (excluding Government securities and cash). MLX believes it may be an investment company under section 3(a)(1)(C). However, MLX contends that, if the Pending Merger is consummated, MLX would not be deemed to be an investment company under section 3(a)(1)(C) of the Act.

2. Rule 3a–2 under the Act generally provides that, for purposes of section 3(a)(3), an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding, or trading in securities for a period not exceeding one year if the issuer has a *bona fide* intent to be engaged in a noninvestment company business. For the period from July 1, 1995 through June 30, 1996, MLX operated under the exemption provided by rule 3a–2.

3. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security or transaction, or any class thereof, from any provision of the Act, or of any rule or regulation, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Section 6(e) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions thereof as though the company were a registered investment company.

4. MLX asserts that registration under the Act would involve unnecessary burden and expense for MLX and its shareholders where there is no likelihood of abuse. MLX believes that registration would require costly changes in its financial reporting requirements, because the requirements are significantly different for investment companies. MLX contends that making these changes during this interim period, until it consummates the acquisition of an operating business, is likely to result in considerable and unwarranted confusion of its shareholders and the investing public. MLX states that many shareholders, as a result of this confusion, might sell their positions in MLX, an event which might have an adverse effect on the market price of MLX's securities and consequently on MLX's remaining shareholders. MLX asserts that those shareholders also would be deprived of the benefits of a potential acquisition.

5. MLX contends that certain provisions of the Act also might impair its ability to carry out its stated intention to acquire an operating business. For example, MLX believes that (a) the shareholder approval requirement of section 13(a)(4) of the Act would be a significant obstacle to effecting any acquisition requiring rapid action, (b) the cross-ownership prohibition of section 20(c) of the Act would limit MLX's ability to attempt a takeover which was not favored by the target sought to be acquired, and (c) the debt limitations of section 18 of the Act might preclude bridge financing of an acquisition. Also, MLX asserts that, if MLX is unable to obtain shareholder approval for the Pending Merger and complete it prior to December 31, 1997, failure to obtain the requested order may prevent MLX from completing the Pending Merger after December 31, 1997.

6. MLX states that it is a reporting company under the Securities Exchange Act of 1934 and is subject to extensive reporting and other requirements for the protection of its shareholders. Further, MLX asserts that its shareholders and the investing public have been informed on numerous occasions of its intention to acquire an operating business and the framework for its acquisition efforts. MLX also asserts that it has pursued and remains committed to the acquisition of a suitable operating business consistent with the best interests of its shareholders.

7. MLX notes that, in determining whether to grant an exemption for a transient investment company, the SEC considers these factors: (1) Whether the failure of the company to become primarily engaged in a non-investment company business within one year was due to factors beyond its control; (2) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment company business; and (3) whether the company invested in securities solely to preserve the value of its assets.

8. MLX states that, while it is using its best efforts, in good faith, to acquire an operating business with the proceeds of the Wellman Transaction, it has been unable, notwithstanding the Pending Merger, to negotiate and complete a favorable transaction. MLX asserts that this is attributable solely to factors beyond its control, including the unavailability of suitable acquisition candidates and the unwillingness of certain candidates to accept what MLX believed to be reasonable offers. Moreover, MLX states that the purchase of a suitable operating business of the size being pursued often requires a long period of time. MLX contends that its ability to acquire an operating business will depend upon the availability of suitable acquisition candidates, the willingness of those candidates to accept MLX's offers and the time needed to negotiate the terms of the acquisition and other factors outside of its control.

9. MLX submits that management's efforts to invest its assets in a non-investment company business are evident from the efforts of Three Cities and the other Financial Intermediaries to provide assistance in identifying acquisition candidates, which includes the Pending Merger, and the fact that MLX's management spends substantially all of its time on MLX's acquisition search and MLX's investments in overnight repurchases agreements are made solely to maximize the safety of its assets. MLX contends that its investments in overnight repurchase agreements, motivated primarily by a desire to consummate an acquisition and to preserve the value of capital pending consummation of the acquisition, should not be subject to registration and regulation under the Act.

10. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such company or to purchase from such company any security or other property. Section 17(b) of the Act authorizes the SEC to issue an order of exemption from one or more of the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. MLX believes that, because TCR Affiliates are affiliates of Three Cities that own 39% of existing MLX shares, TCR Affiliates may be deemed to be affiliated persons of MLX under section 2(a)(3) of the Act. Thus, MLX requests an exemption from the provisions of section 17(a) to the extent necessary to permit the Pending Merger.

11. MLX states that TCR Affiliates, unlike other existing MLX shareholders, will be receiving Class B Common Stock that permits TCR Affiliates to retain a significant voting interest in MLX. However, MLX contends that, despite the greater voting rights inherent in the Class B Common Stock, TCR Affiliates have agreed under the Shareholders

Agreement to be subject to substantial detriment compared with all other MLX shareholders. MLX asserts that the Pending Merger and Related Transactions were designed to satisfy Mr. Morton's conditions regarding control of MLX and to permit MLX to retain its major assets, the NOLs. MLX also states that the Pending Merger and Related Transactions were approved by MLX's board of directors, including MLX's disinterested directors, and will not be effective unless approved by a vote of MLX's shareholders. Further, MLX contends that TCR Affiliates are receiving no additional equity or any fee as a result of the Pending Merger. Finally, MLX asserts that the Pending Merger will permit MLX to acquire a suitable operating business that will result in MLX no longer being subject to the Act. Thus, MLX contends that the terms of the Pending Merger are reasonable and fair and do not involve overreaching.

12. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person unless the transaction has been approved by order of the SEC. MLX requests an exemption pursuant to section 17(d) and rule 17d–1 to the extent necessary to permit MLX (i) to operate and comply with its stock option plans and agreements and (ii) to consummate the Pending Merger and Related Transactions.

13. MLX believes that compliance with section 17(d) of the Act and the rules under the Act would prohibit operation of and compliance with the 1985 Plan, the 1995 Plan, and Mr. Waggoner's Option Agreement. MLX states that these options were granted as compensation to various executive officers and key employees at different times prior to the Wellman Transaction. MLX asserts that inability to realize the value of those options would be unfair to the officers without the result being necessary or appropriate in the public interest.

14. MLX believes that the participation of TCR Affiliates in the Pending Merger and Related Transactions will be on a basis less advantageous than that of other MLX shareholders. MLX contends that TCR Affiliates will be giving up certain benefits retained by other MLX shareholders in order to induce Morton to agree to the Pending Merger and Related Transactions. MLX states that under the Shareholder Agreement, TCR Affiliates will be transferring their voting rights to Mr. Morton in order to give Mr. Morton voting control of MLX. In addition, MLX asserts that the Shareholders Agreement contains severe restrictions on TCR Affiliates' ability to transfer their shares. Further, MLX asserts that under the Voting Agreement, TCR Affiliates have agreed to vote their shares in MLX in favor of the Recaptalization and Pending Merger. MLX states that for the reasons stated above under section 17(a), MLX meets the standards of rule 17d–1. Thus, MLX contends that no regulatory purpose would be served by prohibiting MLX from consummating the Pending Merger and Related Transactions.

15. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. MLX states that all assets invested under the Program are in the custody of qualified banks and the ability of the banks to transfer money in and out is subject to numerous restrictions and checks and balances. Furthermore, MLX states that those assets are insured up to $5 million, an amount substantially in excess of what would be required under a fidelity bond obtained under section 17(g) of the Act. MLX also states that its custodial arrangements are consistent with the substantive requirements of rule 17f–2 under the Act, except for paragraph (f) thereof regarding the requirement for MLX's independent accountants to conduct three actual examinations. MLX also submits that its financial statements are audited annually by its independent accountants.

Applicant's Conditions

Applicant agrees that any order will be subject to the following conditions:

1. During the period of time MLX is exempted from registration under the Act, MLX will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by MLX's board of directors, except that MLX may make equity investments in issuers that are not investment companies, as defined in section 3(a) of the Act (unless an issuer is covered by a specific exclusion from the definition of investment company under section 3(c) other than sections 3(c)(1) and 3(c)(7)), in the following circumstances: (a) in connection with the consideration of the possible acquisition of an operating business as evidenced by a resolution approved by MLX's board of directors, and (b) in connection with the acquisition of majority-owned subsidiaries.

2. MLX will allocate and utilize its accumulated cash and short-term securities for the purpose of funding cash requirements for its existing businesses or far acquiring one or more new businesses.

3. While any order is in effect, MLX's 10–K, 10–Q, and annual reports to shareholders will state that an exemptive order has been granted under sections 6(c) and 6(e) of the Act and that MLX and other persons, in their transactions and relations with MLX, are subject to sections 9, 17(a) (except as discussed in the application), 17(d) (except as discussed in the application), 17(e), 17(f) (except as discussed in the application), and 36 through 53 of the Act as if MLX were a registered investment company.

4. MLX will obtain an amended order from the SEC prior to any material modification of MLX's custodial arrangement in a manner not described in the application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32651 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1684/803–124]

Thomson Technical Data Corporation; Notice of Application

December 9, 1997.

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

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940. (''Advisers Act'').

APPLICANT: Thomson Technical Data Corporation (''Technical Data'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to register with the SEC as an investment adviser.

Filing Dates: The application was filed on September 25, 1997 and amended on October 8, 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