

Regulation ATS as well as other rules and regulations of the Commission and the SROs. Without the data required by Rule 303, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 69 respondents.

Sixty-nine respondents will spend approximately 276 hours per year (69 respondents at 4 burden hours/respondent) to comply with the record preservation requirements of Rule 303. At an average cost per burden hour of \$86.54, the resultant total related cost of compliance for these respondents is \$23,885.04 per year (276 burden hours multiplied by \$86.54/hour).

Compliance with Rules 301, 302, and 303 is mandatory. The information required by the Rules 301, 302, and 303 is available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Regulation ATS requires alternative trading systems to preserve any records, for at least three years, made in the process of complying with the systems capacity, integrity and security requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments

must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 26, 2001.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25052; 812-11262]

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

June 26, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c), 10(f), and 17(b) of the Investment Company Act of 1940 ("Act") for exemptions from sections 10(f) and 17(a) of the Act.

Summary of Application: The requested order would permit certain management investment companies to purchase municipal securities through group orders where an affiliated broker-dealer is a member of the underwriting syndicate.

Applicants: Apex Municipal Fund Inc., CMA Multi-State Municipal Series Trust, CMA Tax-Exempt Fund, Merrill Lynch California Municipal Series Trust, Merrill Lynch High Income Municipal Bond Fund, Inc., Merrill Lynch Institutional Tax-Exempt Fund, Merrill Lynch Multi-State Limited Maturity Municipal Series Trust, Merrill Lynch Multi-State Municipal Series Trust, Merrill Lynch Municipal Bond Fund, Inc., Merrill Lynch Municipal Strategy Fund, Inc., Merrill Lynch Municipal Series Trust, MuniAssets Fund, Inc., The Municipal Fund Accumulation Program, Inc., MuniEnhanced Fund, Inc., MuniHoldings California Insured Fund, Inc., MuniHoldings Florida Insured Fund, MuniHoldings Fund, Inc., MuniHoldings Fund II, Inc., MuniHoldings Insured Fund, Inc., MuniHoldings Insured Fund II, Inc., MuniHolding Michigan Insured Fund II, Inc., MuniHoldings New Jersey Insured Fund, Inc., MuniHoldings New York Insured Fund, Inc., MuniInsured Fund, Inc., MuniVest Fund, Inc., MuniVest Fund II, Inc., MuniYield Arizona Fund, Inc., MuniYield California Fund, Inc., MuniYield California Insured Fund, Inc., MuniYield California Insured Fund II, Inc., MuniYield Florida Fund, MuniYield Florida Insured Fund,

MuniYield Fund, Inc., MuniYield Insured Fund, Inc., MuniYield Michigan Fund, Inc., MuniYield Michigan Insured Fund, Inc., MuniYield New Jersey Fund, Inc., MuniYield New Jersey Insured Fund, Inc., MuniYield New York Insured Fund, Inc., MuniYield Pennsylvania Insured Fund, MuniYield Quality Fund, Inc., MuniYield Quality Fund II, Inc. (collectively, the "Funds"); Merrill Lynch Investment Managers, L.P. ("MLIM") and Fund Asset Management, L.P. ("FAM") (each an "Adviser" and, collectively, the "Advisers"); and Merrill Lynch Pierce, Fenner & Smith Incorporated ("MLPF&S").

Filing Dates: The application was filed on August 14, 1998, and amended on June 25, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2001 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, c/o Philip L. Kirstein, Esq., MLIM, Box 9011, Princeton, NJ 08543-9011.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942-0646, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. Each fund is an open-end or closed-end management investment company registered under the Act. The investment objective of each Fund is to seek as high a level of current income exempt from federal tax and, to the

extent applicable, state and local taxes as is consistent with its investment approach. To meet this objective, the Funds invest in Eligible Municipal Securities, as that term is defined in rule 10f-3(a)(3) under the Act.¹ Applicants state that, with approximately \$40.4 billion in assets under management, the Funds comprise one of the largest municipal bond fund complexes.

2. Each Fund has an investment advisory agreement with an Adviser pursuant to which the Adviser provides investment advisory services to the Fund. Each Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. Both Advisers are owned and controlled by Merrill Lynch & Co., Inc. ("ML & Co.").

3. MLPF&S, a registered broker-dealer, is a wholly-owned subsidiary of ML & Co. MLPF&S participates as an underwriter in a substantial number of public offerings. Applicants state that MLPF&S is one of the top underwriters in most types of municipal securities. In 1999, for example, MLPF&S was lead manager or co-manager of approximately \$50.95 billion, or 23.25%, of the dollar volume of new issues of municipal securities having a remaining maturity of more than thirteen months, and of approximately \$3.10 billion, or 10% of those having a remaining maturity of thirteen months or less.

4. Applicants request relief from section 10(f) of the Act under section 10(f) and from section 17(a) of the Act under sections 6(c) and 17(b) of the Act to permit the Funds to place group orders for Eligible Municipal Securities with an underwriting syndicate that includes MLPF&S. A group order is an order that is allocated to all members of the syndicate in proportion to their respective participations. The requested relief would extend only to situations where: (i) the syndicate is accepting only group orders; or (ii) the lead manager of the syndicate believes the offering will be oversubscribed at the time the Funds place their order, and group orders will be given priority over net designated orders.² Applicants also request that the relief apply to registered management investment companies organized in the future that invest in

Eligible Municipal Securities and are advised by an Adviser (including any successors in interest)³ or by an entity controlling, controlled by, or under common control with an Adviser ("Future Funds").

Applicant's Legal Analysis

1. Section 10(f), in relevant part, prohibits a registered investment company from purchasing securities from an underwriting syndicate in which an affiliated person of the company's investment adviser acts as a principal underwriter. Under section 2(a)(3) of the Act, MLPF&S is an affiliated person of each Adviser because all three entities are under the control of ML & Co.

2. Section 10(f) further provides that the Commission, by rule or order, may exempt any transaction or class of transactions from the provisions of section 10(f) to the extent that the exemption is consistent with the protection of investors. Rule 10f-3 under the Act permits a registered investment company to make purchases otherwise prohibited by section 10(f) under certain conditions, including that purchases of municipal securities may not be made through group orders or otherwise allocated to the account of an underwriter affiliated with the company's investment adviser. Applicants state that rule 10f-3 prevents the Funds from placing group orders for Eligible Municipal Securities with an underwriting syndicate that includes MLPF&S.

3. Section 17(a) generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling securities to the investment company. Applicants submit that a Fund's submission of a group order for Eligible Municipal Securities to a syndicate that includes MLPF&S may be deemed a principal transaction between the Fund and MLPF&S and thus prohibited by section 17(a).

4. Section 17(b) authorizes the Commission to exempt a transaction from the provisions of section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and

do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c), in relevant part, permits the Commission to exempt a class of transactions from any provision of the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested exemptions meet the standards for relief set forth in sections 6(c), 10(f), and 17(b).

5. According to applicants, several factors have had, and increasingly will have, a significant negative impact on the ability of the Advisers to make appropriate municipal securities investments of the Funds. Applicants contend that increased investor demand for tax-exempt investment opportunities has resulted in fierce competition or municipal securities among individual investors and funds investing in such securities and that, at the same time, the supply of new issues of municipal securities has declined. Applicants further contend that, since passage of the Tax Reform Act of 1986, a number of underwriters have reduced or eliminated their municipal bond business. Applicants assert that this development has been coupled with a dramatic consolidation among investment banks acting as underwriters and dealers. According to applicants, this consolidation among underwriters has had the effect of boosting MLPF&S's participation in municipal securities underwritings generally and that, as a result, the Funds' opportunities to purchase municipal securities from syndicates that do not include MLPF&S have diminished significantly.

6. Applicants also assert that there is an increasing tendency in municipal securities offerings for the underwriting syndicate to give a higher priority to group orders than to net designated orders, and that group orders are comprising an increasing percentage of MLPF&S's negotiated transaction business. For example, in the calendar year period ending December 31, 1999, 23.08% of MLPF&S's total senior managed negotiated transaction business was conducted on a group order basis, compared with only 10.05% for the corresponding period in 1998.

7. Applicants assert that, without the requested relief, the Funds may have to pay higher prices for Eligible Municipal Securities in the secondary market and may risk being underinvested at times due to a lack of other appropriate

¹ The term Eligible Municipal Securities generally refers to municipal securities that have received an investment grade rating from at least one NRSRO. The term "municipal securities," as defined in section 3(a)(29) of the Securities Exchange Act of 1934, generally refers to securities that are issued by or on behalf of states or their political subdivisions, agencies and instrumentalities, the interest on which is exempt from federal taxation.

² In a net designated order, the designated members of the syndicate sharing the order retain the entire commission generated by the order.

³ The term "successors in interest" is limited to entities that result from a reorganization into another jurisdiction or change in the type of business organization. Each Fund that currently intends to rely upon the requested order has been named as an applicant. Any Future Fund and any investment adviser of a Future Fund that relies on the order will comply with the terms and conditions of the application. For purposes of determining compliance with rule 10f-3(b)(7) under the Act, FAM, MLIM and any investment adviser of a Future Fund will be considered the same investment adviser.

investment opportunities. Applicants believe that the conditions to the order will ensure that the Funds place group orders only where reasonably necessary to enable them to purchase suitable portfolio securities in the desired quantities.

Applicants' Conditions

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

1. The terms of the order will apply only to purchases of Eligible Municipal Securities in negotiated underwritings.

2. Applicants will comply with all provisions of rule 10f-3 except for paragraph (b)(8) to the extent that it prohibits the purchase of Eligible Municipal Securities through group orders when MLPF&S is a member of the underwriting syndicate.

3. The Advisers may enter group orders on behalf of the funds when MLPF&S is a member of the underwriting syndicate only where: (i) the lead manager for the syndicate has informed the Advisers that only group orders are being accepted; or (ii) as of the time the Advisers placed an order, and based on the orders received by the syndicate through that time, the lead manager believed that total orders would exceed the available quantity of Eligible Municipal Securities (*i.e.*, the Eligible Municipal Securities will be oversubscribed) and group orders will receive a higher priority than net designated orders.

4. At the time of purchase by a Fund, MLPF&S will not be obligated for more than 50% of the Eligible Municipal Securities being offered by the relevant underwriting syndicate.

5. The Advisers may place group orders on behalf of the Funds through MLPF&S or any unaffiliated member of the syndicate, but may not, under any circumstances, place a net designated order for the credit of or through MLPF&S.

6. For all purchases by a Fund of Eligible Municipal Securities when MLPF&S is a member of the underwriting syndicate, there will be a substantially contemporaneous notation made at the time the Advisers place an order indicating that the lead manager has stated that only group orders will be accepted, or that the lead manager believed at such time that the Eligible Municipal Securities will be oversubscribed and group orders will receive a higher priority than net designated orders. Where MLPF&S is the lead manager, such notation will be provided in writing by MLPF&S to the Advisers. Where there is an unaffiliated lead manager, the Advisers will obtain

orally from the lead manager a representation to the foregoing effect and will note the receipt thereof on the trade ticket. The Advisers also will obtain from the lead manager a copy of the information described in rule G-11(f) of the Municipal Securities Rulemaking Board. At the close of the offering, the Advisers will make a notation as to whether the offering was oversubscribed. This documentation will be included as part of the Fund's compliance with the periodic reporting and recordkeeping requirements of rule 10f-3, set forth in paragraphs (b)(9) and (b)(11)(ii), respectively.

7. The board of directors (or trustees) of the Fund, including a majority of the directors (or trustees) who are not interested persons under section 2(a)(19) of the Act, will review no less frequently than quarterly each purchase of Eligible Municipal Securities made by the Fund pursuant to the order. The board will determine that the terms of the transactions were reasonable and fair to the shareholders of the Fund and did not involve overreaching of the Fund or its shareholders on the part of any person concerned. Among other things, the board will consider the number of instances in which a notation made pursuant to condition 6 above indicated that the offering was going to be oversubscribed when, according to the notation made at the close of the offering pursuant to condition 6 above, it was not oversubscribed. In considering whether the price paid for the Eligible Municipal Securities was reasonable and fair, the price of the Eligible Municipal Securities will be analyzed with respect to comparable transactions identified by MLPF&S or the Advisers involving similar securities being purchased or sold during a comparable period of time, if such transactions could reasonably be found to have existed.

8. The order will be valid only so long as the Advisers, on the one hand, and MLPF&S, on the other, operate as separate entities and independent profit centers within the holding company framework of ML & Co., with separate capitalization, separate books and records, and substantially separate officers and employees. ML & Co. will not have any involvement with respect to proposed transactions pursuant to the order and will not attempt to influence or control in any way the placing by the Funds or the Advisers of orders with MLPF&S.

9. The legal departments of MLPF&S and the Advisers will prepare guidelines for personnel of MLPF&S and the Advisers to make certain that transactions conducted pursuant to the

order comply with the above conditions, and that the parties maintain arm's length relationships. In the training of personnel of MLPF&S, particular emphasis will be given to the fact that the subject transactions may occur only where the lead manager has informed the Advisers in the manner described in condition 6 above that group orders are required for purchase, or that the lead manager believes the Eligible Municipal Securities will be oversubscribed and that group orders will receive a higher priority than net designated orders. and that the Advisers may not place net designated orders for the credit of or through MLPF&S. the legal departments will periodically monitor the activities of MLPF&S and the Advisers to make certain of adherence to the conditions set forth in the order.

10. For three years following the issuance of the order, the Advisers will produce data listing the purchases of Eligible Municipal Securities made by the Funds pursuant to the order during the preceding year, indicating whether each purchase was effected under the circumstances described above in condition 3(i) or 3(ii) and the percentage of the offering that was purchased by the Funds. MLPF&S will produce data and provide copies to the Advisers showing the number of Eligible Municipal Securities underwritings when: (i) MLPF&S was a member of the underwriting syndicate and only group orders were accepted or the Eligible Municipal Securities were oversubscribed and group orders received a higher priority than net designated orders; and (ii) MLPF&S was lead manager or co-manager and only group orders were accepted or the Eligible Municipal Securities were oversubscribed and group orders received a higher priority than net designated orders; and (ii) MLPF&S was lead manager or co-manager and only group orders were accepted or the Eligible Municipal Securities were oversubscribed and group orders received a higher priority than net designated orders. The above information will be included as part of the Funds' compliance with the periodic reporting and recordkeeping requirements of rule 10f-3, set forth in paragraphs (b)9) and (b)(11)(ii), respectively.

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

Margaret H. McFarland,

Deputy Secretary.

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