

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.