

\$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