all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the securities in the Fund's portfolio. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds or Trust.

Applicants' Conditions

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

1. Applicants will not register a Future Fund, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on a Listing Market without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Listing Market.

4. Neither the Trust (with respect to any Fund) nor any of the Funds will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Fund has information about the premiums and discounts at which the Fund's Shares have traded.

6. The prospectus and annual report for each Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, a Listing Market rule requiring Listing Market members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21937 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26164; 812–13001]

Merrill Lynch Principal Protected Trust, et al.; Notice of Application

August 20, 2003.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(3) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

APPLICANTS: Merrill Lynch Principal Protected Trust (the ''Trust''), Merrill Lynch Investment Managers, L.P. (''MLIM''), and Fund Asset Management, L.P. (''FAM,'' and together with MLIM, the ''Advisers'').

SUMMARY OF APPLICATION: Applicants request an order to permit any existing and future series of the Trust, any existing and future registered investment company or series that has as its investment adviser an Adviser or other registered investment adviser that is in the control of, controlled by, or under common control with an Adviser (collectively with the Trust and its present and future series, the ''Funds'') to enter into an arrangement with any entity that now or in the future is in control of, controlled by, or under common control with, an Adviser (a ''Merrill Lynch Affiliate'') to provide principal protection to the Fund (''Principal Protection''), or to serve as a hedging counterparty (''Hedging Counterparty'') where an unaffiliated third party providing Principal Protection to the Fund seeks to enter into a derivatives contract or reinsurance contract with a Merrill Lynch Affiliate to hedge all or a portion of the risks under the Principal Protection arrangement.[1]

FILING DATES: The application was filed on August 13, 2003.

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 September 15, 2003, 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, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Andrew J. Donohue, Esq., Merrill Lynch Investment Managers, L.P., P.O. Box

[1] All existing entities currently intending to rely on the requested order have been named as applicants. Any other existing and future entity that relies on the order will comply with the terms and conditions of the application.

9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Michael W. Mundt, Senior Special Counsel, 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 (tel. 202–942–8090).

Applicants' Representations

1. The Trust, a statutory trust organized under the laws of Delaware, is registered as an open-end investment company under the Act. Each Fund will be registered under the Act as, or be a series of, a management investment company. Each Adviser is registered with the Commission under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. Each Fund proposes to provide Principal Protection, pursuant to which shareholders who hold their Fund shares for a prescribed period of time (the ''Protection Period'')[2] will be able, at the end of the period (the ''Maturity Date''), to redeem their shares and receive no less than the amount of their initial investment, subject to certain adjustments (the ''Protected Amount''). Applicants state that Principal Protection will be achieved primarily through the use of a mathematical formula that allocates assets based on the ''Constant Proportion Portfolio Insurance'' model (the ''Formula'').[3] In addition to using the Formula, the Fund may also enter into a financial guarantee agreement, warranty agreement or other principal protection agreement[4] or may acquire an insurance policy (each a ''Protection Agreement''), in order to ensure that the Fund can meet its obligation to pay each redeeming shareholder the Protected Amount on the Maturity Date.[5] The entity providing Principal Protection (''Protection Provider'') may be a bank, brokerage firm, insurance company or other financial institution. In certain cases, the Protection Provider may seek to hedge all or a portion of its risks by entering into a derivatives contract or reinsurance contract with a Hedging Counterparty. Each Fund will pay a fee to the Protection Provider, typically equal to a percentage of the Fund's average daily net assets.

3. Each Protection Agreement will require the Protection Provider to pay the Fund an amount equal to any shortfall between the aggregate Protected Amount and the net asset value (''NAV'') of the Fund on the Maturity Date (the ''Shortfall''). Under the terms of each Protection Agreement, the Fund will be required to manage its assets within certain investment parameters, based in large part on the asset allocations determined by the Formula. If the Fund fails to comply with these allocations (''Trigger Event''), the Protection Provider may demand the Fund cure the situation by reallocating Fund assets or, in the event the Fund fails to effect the reallocation within a specified period of time, by causing the Fund to defease its portfolio and allocate all of its assets to the Fund's Protection Component (a ''Defeasance Event'').

4. A Protection Agreement and the fee for the Protection Agreement will be subject to approval by the Board of Directors or Trustees of each Fund (the ''Board''), including a majority of those Directors or Trustees who are not interested persons of a Fund or an Adviser, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''). In the event that a Fund wishes to consider entering into a Protection Agreement with a Merrill Lynch Affiliate, or with a Protection Provider that is otherwise not an affiliated person of the Fund or its Adviser, or an affiliated person of such a person (an ''Unaffiliated Provider''), but that wants to use a Merrill Lynch Affiliate as its Hedging Counterparty (each, an ''Affiliated Protection Arrangement''), the Adviser will be required to conduct a bidding process to select the Protection Provider. Applicants state that the Adviser will initially solicit at least three other bids in addition to the bid relating to an Affiliated Protection Arrangement, then will engage in negotiations with all of the bidders. At the end of the negotiation process, all bidders who wish to participate will submit final bids. All final bids will be due at the same time and no bidder will be permitted to change its final bid once submitted. After final bids are submitted, no bidder, including a Merrill Lynch Affiliate, will have access to any competing bids until after the Protection Agreement is entered into by the Fund. In order for the Adviser to recommend the bid relating to an Affiliated Protection Arrangement, the Fund must have also received at least two bona fide final bids that are not Affiliated Protection Arrangements.[6] The Adviser will evaluate final bids and recommend a bid for acceptance by the Board, together with an explanation of the basis for this recommendation and a summary of the material terms of any bids that were rejected. Applicants state that in addition to cost, other factors such as creditworthiness will be significant in the Adviser's evaluation of bids, and thus, the Adviser may recommend to the Board a Principal Provider who does not submit the bid with the lowest fee rate.[7] A majority of the Board, including a majority of the Independent Trustees, must approve the acceptance of a bid involving an Affiliated Protection Arrangement, as well as the general terms of the proposed Protection Arrangement. Upon the conclusion of the Adviser's negotiation of the Affiliated Protection Arrangement, the Board must approve the final Protection Agreement, and determine that the terms of the Affiliated Protection Arrangement, as so

[2] The life of a Fund offering Principal Protection will generally be divided into three time periods: (a) An initial offering period during which the Fund will sell shares to the public; (b) the Protection Period during which the Fund will not normally offer its shares to the public and the Fund's assets will be invested pursuant to the Formula (as defined below); and (c) a period after the Maturity Date (the ''Post-Protection Period''), during which the Fund will offer its shares on a continuous basis and pursue an objective that does not include Principal Protection, or alternatively, will wind up and cease operations.

[3] The objective of the Formula is to maximize the allocation of a Fund's assets that may be invested for purposes other than Principal Protection (the ''Portfolio Component''), thus gaining exposure to the securities markets, while attempting to minimize the risk of a shortfall (as defined below) by investing a portion of the Fund's assets in fixed income securities (the ''Protection Component'').

[4] Other principal protection agreements may take the form of a swap agreement or other privately negotiated derivatives contract with similar economic characteristics requiring the Protection Provider (as defined below) to make payments to the Fund in the event of a Shortfall (as defined below).

[5] The Protected Amount may be reduced (a) to the extent the Fund incurs extraordinary expenses, such as litigation expenses, which are not covered by the Protection Agreement, (b) if the Adviser is required to make payments to the Protection Provider and/or the Fund (''Adviser Payment'') under the Protection Agreement as a result of its own negligence or certain other disabling conduct and there is a dispute regarding such payment, or (c) as otherwise described in the Protection Agreement, subject in each case to appropriate prospectus disclosure. The Protected Amount will not be reduced by the Fund's ordinary fees and expenses, including its advisory fees.

[6] If an Unaffiliated Provider submits multiple bids, each with a different Hedging Counterparty, each submission will constitute a separate bid.

[7] If the Protection Provider recommended by the Adviser does not propose the lowest fee to provide Principal Protection and the Board approves a Protection Agreement with such Protection Provider, the Board minutes will reflect the reasons why the Protection Provider requiring the higher fee was approved.

finalized, are not materially different from the terms of the accepted bid.

5. The Board will exercise oversight responsibilities in connection with any Protection Agreement and will establish a special committee (the ''Committee''), a majority of the members of which will be Independent Trustees, if the Fund enters into an Affiliated Protection Arrangement. If a Trigger Event or a Defeasance Event occurs under the Protection Agreement (each, a ''Protection Event''), the Adviser will be required to notify the Committee as soon as practicable, and absent special circumstances, before a decision is reached by the Protection Provider and the Adviser as to how to effect any necessary cure. On or about the Maturity Date, the Board will review information comparing the aggregate Protected Amount with the Fund's total NAV on the Maturity Date, and will review and approve the amount of any Shortfall to be submitted for payment to the Protection Provider under the Protection Agreement (including the amount of any required Adviser Payment to the Fund) (the ''Approved Shortfall Amount'').

Applicants' Legal Analysis

A. Section 12(d)(3) of the Act

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibition of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), provides that the exemption provided by the rule is not available when the issuer of the securities is the investment adviser, promoter, or principal underwriter of the investment company, or any affiliated person of such entities. In addition, rule 12d3–1(b) does not permit a registered investment company to (i) own more than five percent of a class of equity securities of an issuer that is engaged in securities related activities; (ii) own more than ten percent of such an issuer's debt securities; or (iii) invest more than five percent of the value of its total assets in the securities of any such issuer. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act to the extent that such 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.

2. Applicants state that by virtue of entering into an Affiliated Protection Arrangement with a Merrill Lynch Affiliate that is a broker, dealer, underwriter or investment adviser to a registered investment company or an investment adviser registered under the Investment Advisers Act, a Fund may be deemed to have acquired a security from the Merrill Lynch Affiliate.[8] In addition, applicants state that it is possible that a Protection Agreement entered into by the Fund (whether pursuant to an Affiliated Protection Agreement or otherwise) may represent more than ten percent of the debt securities of a Protection Provider that is involved in securities related activities or more than five percent of the total assets of the Fund. Therefore, applicants seek an exemption from section 12(d)(3) to the extent necessary to permit the Fund to enter into Affiliated Protection Arrangements with a Merrill Lynch Affiliate or a Protection Agreement with another Protection Provider that is involved in securities related activities.

3. Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses and to prevent reciprocal practices between investment companies and securities related businesses. Applicants assert that the proposed transactions are consistent with the policy and intent underlying section 12(d)(3). In terms of the risk-preventing element of section 12(d)(3), applicants state that the Adviser and Board, when evaluating the credentials of a prospective Protection Provider, will take into account the Protection Provider's creditworthiness, any ratings assigned by a nationally recognized statistical ratings organization (''NRSRO''), and the availability of audited financial statements. Applicants state that the purpose of the Fund's Protection Agreement is to provide Principal Protection for the Fund, not to reward a Merrill Lynch Affiliate (or any other broker-dealer) for sales of Fund shares. Moreover, applicants believe that the conditions set forth in the application will ensure that each Fund is operated in the interests of its shareholders and not in the interests of a Merrill Lynch Affiliate or any other Protection Provider.

B. Section 17(a) of the Act

1. Section 17(a)(1) and (2) of the Act generally prohibit the promoter or principal underwriter, or any affiliated person of the promoter or principal underwriter, of a registered investment company, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among other things: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned; and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the terms of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act.

2. Applicants state that depending on the structure of a Protection Agreement, it might be deemed to be a security or other property, and the Fund's entering into a Protection Agreement with a Merrill Lynch Affiliate might be deemed to be the acquisition of a security or other property from a Merrill Lynch Affiliate. In addition, applicants state that if a Merrill Lynch Affiliate were to serve as a Hedging Counterparty to an Unaffiliated Provider, the Merrill Lynch Affiliate might under certain circumstances be deemed to be indirectly involved in the sale of a security or other property to the Fund. Applicants request an exemption under sections 6(c) and 17(b) to permit the proposed transactions.

3. Applicants submit that the involvement of a Merrill Lynch Affiliate in an Affiliated Protection Arrangement will benefit a Fund and its shareholders given the expertise of the Merrill Lynch Affiliates in structuring and providing credit enhancements for Principal Protection arrangements, and the alignment of interests that exist between the Merrill Lynch Affiliates and the Funds. Applicants argue that the relationship of a Fund and Unaffiliated Provider may be more adversarial, with the protection of the Unaffiliated

[8] Applicants state that depending on the structure of the Protection Agreement, while certain types of Protection Agreements would not meet the definition of ''security'' contained in section 2(a)(36) of the Act such as insurance contracts, certain types of derivative agreements may be deemed to constitute securities.

Provider's rights and remedies being of paramount importance to the Unaffiliated Provider, which could result in the Unaffiliated Provider exhibiting a greater willingness to declare a Defeasance Event or to rely on a clause permitting it to avoid liability to the Fund than would a Merrill Lynch Affiliate in similar circumstances. Applicants further argue that a Merrill Lynch Affiliate may assume a greater risk to itself by avoiding a Defeasance Event for the same fee charged by an Unaffiliated Provider without creating additional risk to the Fund or its shareholders by allowing a greater portion of the Fund's assets to remain invested in the Portfolio Component. Applicants also argue that the use of a Merrill Lynch Affiliate as Protection Provider may lower the cost of Principal Protection since there is a limited universe of Protection Providers with which a Fund may enter into a Protection Agreement. In addition, because a Merrill Lynch Affiliate may have a greater comfort level with the Formula and certain investment strategies to be used by the Advisers than an Unaffiliated Provider, applicants state that this may allow the Merrill Lynch Affiliate to enter into a Hedging Transaction with an Unaffiliated Provider for a lower fee or spread than would be available through a counterparty unaffiliated with the Fund.

4. Applicants submit that the conditions applicable to each Affiliated Protection Arrangement will ensure that such arrangement will be reasonable and fair to each Fund and that no Merrill Lynch Affiliate will be able to engage in overreaching. Applicants state that a Fund will not be able to participate in an Affiliated Protection Arrangement until after a bidding process has been completed in which the Fund receives at least two bona fide offers for Principal Protection from an Unaffiliated Provider not seeking to hedge with a Merrill Lynch Affiliate, and that a Merrill Lynch Affiliate will not have an unfair advantage over other bidders in winning the bid. A Fund may not accept a bid or subsequently enter into an Affiliated Protection Arrangement unless it has been approved by the Fund's Board, including a majority of Independent Trustees, who must determine that entering into the Affiliated Protection Arrangement is in the best interests of the Fund and its shareholders and meets the standards specified in section 17(b) of the Act. In addition, applicants state that if a Fund enters into an Affiliated Protection Arrangement, the Fund's Board will establish a Committee to represent the Fund's interests if a Protection Event should occur. Lastly, applicants state that the Board will approve the Approved Shortfall Amount to be submitted for payment to the Affiliated Protection Provider and that the Fund will not accept a lesser amount in settlement of its claim without a further Commission exemptive order.

5. Applicants submit that an Affiliated Protection Arrangement will be consistent with the policies of each Fund, as recited in its registration statement. Applicants further submit that an Affiliated Protection Arrangement, subject to the conditions set forth in the application, will be consistent with the purposes fairly intended by the policy and provisions of the Act and will be in the best interests of each Fund and its shareholders.

C. Section 17(d) of the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of, or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d–1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

2. Applicants state that the fee paid to a Merrill Lynch Affiliate pursuant to an Affiliated Protection Arrangement (either by the Fund directly under a Protection Agreement or indirectly through a Hedging Transaction) may be deemed to involve a joint enterprise or joint arrangement or profit sharing plan under section 17(d) and rule 17d–1 because a Merrill Lynch Affiliate may be in control of, controlled by or under common control with the Adviser of a Fund, and the Merrill Lynch Affiliate's compensation as the Protection Provider or Hedging Counterparty will be based on the Fund's assets. In addition, the Merrill Lynch Affiliate might make a profit or suffer a loss depending on the performance of the Fund. Applicants also state that an Affiliated Protection Arrangement could be deemed to involve a joint enterprise or joint arrangement because of the coordination and possible ongoing negotiations between a Fund and a Merrill Lynch Affiliate in managing the Fund's risk exposure.[9] Applicants thus request an order pursuant to section 17(d) and rule 17d–1.

3. Applicants state that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants submit that the conditions proposed in the application will ensure that a Fund and its shareholders are treated fairly and not taken advantage of by a Merrill Lynch Affiliate. Applicants submit that a Fund and its shareholders will benefit from the participation of a Merrill Lynch Affiliate in an Affiliated Protection Arrangement. For these reasons, applicants state that the proposed arrangement satisfies the standards of section 17(d) and rule 17d–1.

Applicants' Conditions

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

1. Prior to recommending to the Board that a Fund enter into an Affiliated Protection Arrangement, the Adviser will conduct a competitive bidding process in which the Adviser solicits bids on at least three Protection Agreements that would not constitute Affiliated Protection Arrangements. At a reasonable amount of time prior to the date bids are to be submitted, the Adviser will solicit bids by supplying prospective bidders with a bid invitation letter that includes any requirement for a potential Protection Provider to include audited financial statements in the Fund's registration statement, a copy of the relevant sections of a draft prospectus of the Fund, and a draft of the Protection Agreement. Initial bids will be due at the same time, and no bidder will have access to any competing bids prior to its own submission. After initial bids are received, the Adviser will negotiate in good faith with each of the bidders to obtain more favorable terms for the Fund. During these negotiations, all bidders will have access to equal information about competing bids. At the end of this process, all bidders who

[9] For example, applicants state that a Merrill Lynch Affiliate could seek to request that a Fund's assets be invested not to seek to maximize the Fund's return, but in a manner designed to protect the Merrill Lynch Affiliate's interest by over-allocating the Fund's assets to the Protection Component so as to minimize the risk that a Merrill Lynch Affiliate would be called upon to make a payment under an Affiliated Protection Arrangement.

wish to participate will submit final bids. All such final bids will be due at the same time, and no bidder will be permitted to change its final bid once submitted. After the final bids are submitted, no bidder, including a Merrill Lynch Affiliate, will have access to any competing bids until after the Protection Agreement is entered into by the Fund. A Fund may not enter into an Affiliated Protection Arrangement unless two bona fide final bids have been received for Protection Agreements that would not constitute Affiliated Protection Arrangements.

2. If the Adviser recommends that the Board approve an Affiliated Protection Arrangement, the Adviser must provide the Board with an explanation of the basis for its recommendation and a summary of the material terms of any bids that were rejected.

3. The Fund's Board, including a majority of Independent Trustees, must approve the acceptance of a bid involving an Affiliated Protection Arrangement, as well as the general terms of the proposed Protection Agreement. In evaluating the final bids and the recommendations from the Adviser, the Board will consider, among other things: (i) The fee rate to be charged by a potential Protection Provider; (ii) the structure and potential limitations of the proposed Principal Protection arrangement and any legal, regulatory or tax implications of such arrangement; (iii) the credit rating (if any) and financial condition of the potential Protection Provider, including any ratings assigned by any NRSRO; and (iv) the experience of the potential Protection Provider in providing Principal Protection, including in particular to registered investment companies. If the Affiliated Protection Arrangement approved by the Board does not reflect the lowest fee submitted in a proposal to provide the Principal Protection, the Board will reflect in its minutes the reasons why the higher cost option was selected.

4. Upon the conclusion of the Adviser's negotiations of the Affiliated Protection Arrangement, including the Protection Agreement, the Fund's Board, including a majority of Independent Trustees, must approve the final Protection Agreement and determine that the terms of the final Affiliated Protection Arrangement, as so finalized, are not materially different from the terms of the accepted bid. The Board, including a majority of its Independent Trustees, will also determine that entering into the Affiliated Protection Arrangement will be in the best interests of the Fund and its shareholders and meets the standards specified in section 17(b) of the Act. The Board will reflect these findings and their basis in its minutes.

5. If a Merrill Lynch Affiliate is chosen as the Protection Provider or Hedging Counterparty, it will not charge a higher fee for its Protection Agreement or Hedging Transaction than it would charge for similar agreements or transactions for unaffiliated parties that are similarly situated to the Fund. Any Merrill Lynch Affiliate acting as Hedging Counterparty will not be directly compensated by the Fund and the Fund will not be a party to any Hedging Transaction.

6. In the event the Fund enters into an Affiliated Protection Arrangement, the Board will establish a Committee, a majority of whose members will be Independent Trustees, to represent the Fund in any negotiations relating to a Protection Event. The Adviser will notify the Committee of any Protection Event as soon as practicable, and absent special circumstances, before a decision is reached by the Protection Provider and the Adviser as to how to effect any cure. All Protection Events will be brought to the attention of the full Board at the next regularly scheduled Board meeting.

7. The Adviser will present a report to the Board, at least quarterly, comparing the actual asset allocation of the Fund's portfolio with the allocation required under the Protection Agreement, describing any Protection Events, and summarizing any negotiations that were the subject of the previous condition.

8. At the conclusion of the Protection Period, the Adviser of a Fund will report to the Fund's Board any Shortfall potentially covered under an Affiliated Protection Arrangement (including, for this purpose, the amount of any required Adviser Payment). The Board, including a majority of Independent Trustees, will evaluate the Shortfall and will determine the amount of the claim (previously defined as the Approved Shortfall Amount) under the Protection Agreement to be submitted to the Protection Provider. The Fund will not settle any claim under the Protection Agreement for less than the full Approved Shortfall Amount determined by the Board without obtaining a further exemptive order from the Commission.

9. No less than a majority of a Fund's Board will consist of Independent Trustees.

10. The Independent Trustees will be represented by independent legal counsel within the meaning of Rule 0–1 under the Act.

11. The Adviser, under the supervision of the Board, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include, without limitation: (i) An explanation of the basis upon which the Adviser selected prospective bidders; (ii) a list of all bidders to whom a bid invitation letter was sent and copies of the bid invitation letters and accompanying materials; (iii) copies of all initial and final bids received, including the winning bid; (iv) records of the negotiations with bidders between their initial and final bids; (v) the materials provided to the Board in connection with the Adviser's recommendation regarding the Protection Agreement; (vi) the final price and terms of the Protection Agreement with an explanation of the reason the arrangement is considered an Affiliated Protection Arrangement; and (vii) records of any negotiations with the Protection Providers related to the occurrence of a Protection Event and the satisfaction of any obligations under a Protection Agreement. All such records will be maintained for a period ending not less than six years after the conclusion of the Protection Period, the first two years in an easily accessible place, and will be available for inspection by the staff of the Commission.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21938 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27715]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 20, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s)