all purposes as interestholders of record in Acquiror Portfolio.

11. The Board of Trustees of the Trust (''Trust Board'') and the Core Board unanimously approved, on January 25, 1997 and March 13, 1997, respectively, the investment of all of the investable assets of Index Fund in Index Portfolio (the ''Transfer'') in order to obtain economies of scale and eliminate duplicative functions and costs associated with operating two separate funds that conduct business in the same manner.

12. Each Board concluded that the Transfer is in the best interests of the shareholders of Index Portfolio and Index Fund and will not result in the dilution of the interests of any of the existing shareholders of Index Portfolio or Index Fund. Portfolio and Index Fund have the same investment objective, investment policies, associated risk profiles, service procedures, advisory fees and expense ratios. Each Board reviewed the annualized expense ratios of Index Portfolio and Index fund and the estimated expense ratios of each of Index Portfolio and Index Fund following the Transfer and noted that the estimated expense ratios would be the same as the expense ratios of each of Index Portfolio and Index Fund prior to the Transfer. In addition, each Board noted Norwest's interests in Index Fund and Index Portfolio. Each Board approved the Transfer based on: (a) The similarities of Index Portfolio and Index Fund; (b) the benefits that would accrue to the interestholders of Index Portfolio and Index Fund after the Transfer; (c) the tax-free nature of the Transfer; (d) the terms and conditions of the Transfer and the nondilutive effect of the Transfer; and (e) the costs of the Transfer.

13. The Plan of Division and Liquidation (the ''Transfer Agreement'') provides that Index Fund will transfer all of its assets to Index Portfolio in exchange for an interest in Index Portfolio (the ''Transfer Interest''). The Transfer Interest will be equal in value to the net value of Index Fund's assets computed as of 4:00 p.m. on May 30, 1997. The value of the assets transferred will be determined in accordance with the standard valuation procedures of Index Portfolio.

14. The expenses of the Reorganization, including all expenses related to obtaining exemptive relief from the SEC, will be borne *pro rata* by Target Portfolio and Acquiror Portfolio on the basis of their respective net assets. The expenses of the Transfer, including all expenses related to obtaining exemptive relief from the SEC, will be borne *pro rata* by Index Portfolio and Index Fund on the basis of their respective net assets.

15. Applicants state that no material change that would affect the application will be made to either the Reorganization Agreement or the Transfer Agreement without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property.

2. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person, and any person directly or indirectly controlling, controlled by, or under common control with such other person, and if such other person is an investment company, any investment adviser thereof. Section 2(a)(9) of the Act defines ''control'' to mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Under section 2(a)(9), a person who owns 25% or more of the voting securities of a company is presumed to control such company.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. Applicants may not rely on rule 17a–8 in connection with the Reorganization because Target Portfolio and Acquiror Portfolio may be deemed to be affiliated in ways other than as permitted in the rule. Norwest controls or holds with power to vote more than 5% of the outstanding shares of Acquiror Portfolio and more than 25% of the outstanding voting securities of Target Portfolio.

5. Applicants may not rely on rule 17a–8 in connection with the Transfer because Index Fund and Index Portfolio may be deemed to be affiliated in ways other than as permitted in the rule. Norwest controls or holds with power to vote more than 25% of the outstanding voting securities of Index Fund and more than 5% of the outstanding shares of Index Portfolio.

6. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair 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 concerned and with the general purposes of the Act.

7. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b) of the Act in that they are fair and reasonable and do not involve overreaching on the part of any party concerned, and that the Reorganization is consistent with both the policies of Target Portfolio and Acquiring Portfolio. In addition, applicants submit that the terms of the Transfer satisfy the standards set forth in section 17(b) in that they are fair and reasonable and do not involve overreaching on the part of any party concerned, and that the Transfer is consistent with both the policies of Index Fund and Index Portfolio.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11739 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22648; 812–10548]

Enterprise Group of Funds, Inc., et al.; Notice of Application

April 30, 1997.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Enterprise Group of Funds, Inc., (''Enterprise Funds''), on behalf of its series, Enterprise Government Securities Portfolio (''Enterprise Government''), Enterprise Money Market Portfolio (''Enterprise Money''), Enterprise Growth and Income Portfolio (''Enterprise Growth and Income''), and Enterprise Small Company Growth

Portfolio (''Enterprise Small Company Growth'') (the series are collectively, the ''Enterprise Portfolios''); Enterprise Capital Management Inc. (''Enterprise Capital''); Retirement System Fund Inc. (''Retirement Inc.''), on behalf of its series, Intermediate Term Fixed Income Fund (''Retirement Intermediate''), Money Market Fund (''Retirement Money''), Core Equity Fund (''Retirement Core''), and Emerging Growth Equity Fund (''Retirement Emerging'') (the series are collectively, the ''Retirement Funds''); and Retirement System Investors, Inc. (''Retirement Investors'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants request an exemption from section 15(f)(1)(A) to permit Retirement Investors and its parent corporation to receive compensation in connection with Enterprise Funds' acquisition of the net assets of the Retirement Funds, without having to reconstitute Enterprise Funds' board of directors. Without the requested exemption, Enterprise Funds would have to reconstitute it boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on March 7, 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 the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 27, 1997 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Enterprise Group of Funds, Inc. and Enterprise Capital Management Inc., 3343 Peachtree Road, NE., Suite 450, Atlanta, Georgia 30326; Retirement System Fund Inc. and Retirement System Investors Inc., 317 Madison Avenue, New York, New York, 10017.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Mary Kay Frech, Branch Chief, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Enterprise Funds is an open-end management investment company registered under the Act consisting of thirteen investment portfolios, including, Enterprise Government, Enterprise Money, Enterprise Growth and Income, and Enterprise Small Company Growth.

2. Enterprise Capital is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and, pursuant to an investment advisory agreement (''Enterprise Advisory Agreement''), serves as investment adviser for Enterprise Funds. The Enterprise Advisory Agreement authorizes Enterprise Capital to enter into subadvisory agreements with various investment advisers as portfolio managers for Enterprise Portfolios. Applicants state that it is contemplated that Retirement Investors will serve as portfolio manager for Enterprise Growth and Income.

3. Retirement Inc. is an open-end management investment company registered under the Act consisting of seven funds, including Retirement Intermediate, Retirement Money, Retirement Core, and Retirement Emerging. Retirement Investors is registered under the Advisers Act and serves as investment adviser for the Retirement Funds.

4. Applicants request an order under section 6(c) of the Act, exempting Enterprise Funds from the provisions of section 15(f)(1)(A) of the Act with respect to the proposed transaction (the ''Transaction''). The Transaction contemplates, among other things, reorganizations whereby the net assets of each of the Retirement Funds will be acquired by the respective Enterprise Portfolio, in exchange for an equivalent value of Class Y Shares[1] of the Enterprise Portfolio, which shares will be distributed to the shareholders of each Retirement Fund in liquidation thereof (the ''Reorganizations''). Applicants state that Enterprise Capital intends to compensate Retirement Investors and its parent corporation, Retirement Systems Group, Inc. (''Retirement Group'') in connection with the Transaction.

5. Retirement Investors and Retirement Group have executed a letter of intent with Enterprise Capital dated January 7, 1997 (the ''letter of Intent''). The Letter of Intent, among other things, contemplates that Retirement Intermediate be reorganized with Enterprise Government; Retirement Money be reorganized with Enterprise Money; and Retirement Core and Retirement Emerging be reorganized with two newly created portfolios of Enterprise Funds, Enterprise Growth and Income and Enterprise Small Company Growth, respectively. Applicants state that consummation of each of the Reorganizations contemplated by the Letter of Intent is subject to certain conditions, including negotiation and execution of a mutually satisfactory definitive agreement among Enterprise Capital, Retirement Investors and Retirement Group relating to the Transaction (the ''Transaction Agreement'') and receipt of various required approvals, including approval of the boards of directors of the mutual funds involved in the Transaction and approval by the shareholders of the Retirement Funds.

6. Retirement Investors, Retirement Group, and Enterprise Capital have agreed to bear their own expenses in connection with the negotiation and execution of the Transaction Agreement. In addition, Retirement Investors and Retirement Group have agreed to bear any expenses incurred by Retirement Inc. in connection with the Transaction.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to receive ''any amount or benefit'' in connection with a sale of securities of, or sale of any other interest in, such investment adviser (which results in an assignment of an advisory contract with such company) is certain conditions are met. Section 15(f)(1)(A) requires that, for a period of three years after such sale, at least 75 percent of the board of an investment company (or its successor, by reorganization or otherwise) may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company.

2. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the exemption is necessary of appropriate in the public interest and consistent with the protection of investors and the

[1] Applicants state that Class Y shares are not subject to any initial or contingent deferred sales charge, or any distribution or service fees pursuant to rule 12b–1 under the Act.

purposes fairly intended by the policy and provisions of the Act. Section 15(f)(3)(B) provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A).

3. Applicants state that the net assets of Enterprise Government and Enterprise Money ($79,375,576 and $60,417,051 respectively, as of December 31, 1996) are substantially greater than the net assets of Retirement Intermediate and Retirement Money ($6,487,280 and $1,670,085 respectively, as of December 31, 1996), individually. Applicants also state that the net assets of Enterprise Funds ($952,100,717, as of December 31, 1996) as a whole are far greater than the net assets of the four Retirement Funds ($27,242,022, as of December 31, 1996), even though the two newly created portfolios will initially have no assets other than what is received from the Retirement Funds, making the Retirement Funds' assets less than 3% of Enterprise Funds' assets.

4. Applicants submit that it is appropriate for the assets of Enterprise Funds as a whole, as opposed to the individual Enterprise Portfolios, to be taken into account when considering the ''substantially greater'' test of section 15(f)(3)(B). Applicants contend that any other conclusion would be inconsistent with the literal language of the Act. Applicants state that section 15(f)(3)(B) specifically refers to the sale of assets of one investment company to another ''investment company with assets substantially greater in amount.'' Enterprise Funds is the investment company involved in each Reorganization and, in fact, the board of directors of Enterprise Funds must authorize the Reorganization on behalf of the Enterprise Portfolios.

5. The boards of directors of Retirement Inc. and Enterprise Funds consist of the following, including the respective number of directors who are ''interested persons,'' of Retirement Investors, Retirement Group, or Enterprise Capital, as the case may be, within the meaning of section 2(a)(19) of the Act (''Interested Directors''), and who are not Interested Directors (''Disinterested Directors''):

Investment company	Number of interested directors	Number of disinterested directors	Total
Enterprise Funds	3	4	7
Retirement Inc	3	4	7

In order to comply with section 15(f)(1)(A) following consummation of the transactions, Enterprise Funds would have to add five Disinterested Directors or reduce the number of Interested Directors from three to one. If Enterprise Funds were to add five Disinterested Directors, a vote of shareholders would be required pursuant to section 16(a) of the Act, which requires that at least two-thirds of a fund's trustees be elected by shareholders. Enterprise Funds would not otherwise be required to hold a shareholders meeting under Maryland law. Applicants submit that reconstitution of the board of Enterprise Funds would serve no public interest, and in fact, would be contrary to the interests of shareholders of Enterprise Funds.

6. For the reasons stated above, applicants submit that the requested relief is necessary and 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11741 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22647; 813–162]

Merrill Lynch KECALP L.P. 1997 and KECALP Inc.; Notice of Application

April 30, 1997.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Merrill Lynch KECALP L.P. 1997 (the ''1997 Partnership'') and KECALP Inc. (the ''General Partner'').

RELEVANT ACT SECTION: Order requested under section 6(b).

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order [1] (the ''1982 Order''), as previously amended by a subsequent order [2] (the ''1991 Order'' and, together with the 1982 Order, the ''Order''), to permit Merrill Lynch & Co., Inc. and its affiliates (''ML & Co.'') to acquire limited partnership interests in the 1997 Partnership and in any similar partnership commencing operations in the future (collectively, the ''Partnerships''). Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on December 3, 1996, and amended on April 30, 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 Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 27, 1997, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, NY 10080–6123.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Attorney, at (202) 942–0641, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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.

Applicants' Representations

1. The 1997 Partnership is a Delaware limited partnership registered under the Act as a non-diversified, closed-end management investment company. The

[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, et. al.*, Investment Company Act Release Nos. 18081 (Apr. 18, 1991) (notice) and 18137 (May 7, 1991) (order).