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 5th Street, NW., Washington, DC 20549 (tel. no. 202–942–8090).

Applicant's Representation

1. The Fund, organized as a Maryland corporation, is registered under the Act as an open-end management investment company. First Pacific Advisors, Inc. (''Adviser''), registered under the Investment Advisers Act of 1940 (''Advisers Act''), is the Fund's investment adviser.

2. ICMA Retirement Trust (''Affiliated Shareholder'') is a retirement trust for deferred compensation plans and qualified retirement plans established by state and local governments and their agencies and instrumentalities for their employees. The Affiliated Shareholder is not registered under the Act in reliance upon section 2(b) of the Act. The ICMA Retirement Corporation (''Retirement Corporation''), registered under the Advisers Act, serves as the investment adviser to the Affiliated Shareholder. The Affiliated Shareholder owns approximately 13.33% of the outstanding shares of the Fund.

3. The Retirement Corporation, acting in its fiduciary capacity with respect to the Affiliated Shareholder, has concluded that the assets of the Affiliated Shareholder invested in the Fund should be managed directly by the Adviser. Consequently, the Affiliated Shareholder has notified the Fund that it expects to redeem all of its shares of the Fund and place the proceeds in a separate account managed by the Retirement Corporation and subadvised by the Adviser. On August 3, 1998, the Fund's board of directors, including all of the independent directors, determined that it would be in the best interests of the Fund and its shareholders to redeem the shares of the Affiliated Shareholder in-kind.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, acting as principal, from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines ''affiliated person'' of another person to include any person owning 5% or more of the outstanding voting securities of the other person.

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant states that the Affiliated Shareholder is an affiliated person of the Fund under section 2(a)(3)(A) of the Act because it owns beneficially in excess of 5% of the Fund's shares. To the extent that the proposed in-kind redemption would be considered to involve the ''purchase'' of the Fund's portfolio securities by the Affiliated Shareholder, applicant states that the proposed in-kind redemption would be prohibited by section 17(a)(2) of the Act.

4. Applicant submits that the terms of the proposed in-kind redemption meet the standards set forth in section 17(b) of the Act. Applicant asserts that neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicant further states that the portfolio securities to be distributed to the Affiliated Shareholder will be valued according to an objective, verifiable standard and that the in-kind redemption is consistent with the investment policies of the Fund. Applicant also states that the proposed in-kind redemption is consistent with the general purposes of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Fund distributed to the Affiliated Shareholder pursuant to the in-kind redemption (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Fund on a pro rata basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind distributed to the Affiliated Shareholders will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the most recent bid price.

4. The Fund will maintain and preserve for a period of not less that six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in as easily accessible place, a written record of the redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

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

Margaret H. McFarland,

Deputy Security.

[FR Doc. 98–29511 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23509; 812–11350]

Hilliard-Lyons Growth Fund, Inc., et al.; Notice of Application

October 28, 1998.

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

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory agreements (the ''New Advisory Agreements''), for a period of up to 60 days following the later of the dates on which Hilliard

Lyons, Inc., the corporate parent of J.J.B. Hilliard, W.L. Lyons, Inc. (the ''Adviser''), consummates its merger with PNC Bank Corp., or the date on which the requested order is issued (but in no event later than January 31, 1999) (the ''Interim Period''). The order also would permit the Adviser to receive all fees earned under the New Advisory Agreements during the Interim Period following shareholder approval.

APPLICANTS: Hilliard-Lyons Growth Fund, Inc. (the ''Growth Fund''), Hilliard-Lyons Government Fund, Inc. (the ''Government Fund'') (together, the ''Funds,''), and the Adviser.

FILING DATES: The application was filed on October 8, 1998, and amended on October 26, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 November 20, 1998, 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 Fifth Street, NW, Washington, DC 20549. Applicants, Hilliard-Lyons Growth Fund, Inc., *et al.,* Hilliard Lyons Center, Louisville, KY 40202.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, (202) 942–0562, or Mary Kay Frech, Branch Chief, at (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, 450 5th Street, N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Funds are registered under the Act as an open-end management investment companies. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Funds under existing investment advisory agreements (the ''Existing Advisory Agreements'').

2. On August 20, 1998, PNC Bank Corp. (''PNC'') entered into a merger agreement with Hilliard-Lyons, Inc. (''Hilliard-Lyons''), the parent of the Adviser, under which Hilliard-Lyons would be merged into PNC (the ''Merger''). Upon consummation of the Merger, PNC will own all of the outstanding capital stock of Hilliard-Lyons. Applicants expect consummation of the Merger (the ''Closing Date'') on or before November 30, 1998.[1]

3. Applicants state that the Merger will result in the assignment and the automatic termination of the Existing Advisory Agreements. Applicants request an exemption to permit (a) the implementation during the Interim Period, prior to obtaining shareholder approval, of the New Advisory Agreements, and (b) the Adviser to receive from each Fund, upon approval of that Fund's shareholders, any and all fees payable under the New Advisory Agreement during the Interim Period. The requested exemption would cover the Interim Period of not more than 60 days beginning on the later of the Closing Date or the date on which the requested order is issued, and continuing with respect to each Fund through the date on which each New Advisory Agreement is approved or disapproved by the shareholders of each Fund (but in no event later than January 31, 1999). The New Advisory Agreements will contain terms and conditions identical to those of the Existing Advisory Agreements, except for the effective dates, termination dates, and escrow provisions.

4. On September 17, 1998 and September 21, 1998, the boards of directors (the ''Boards''), including a majority of the members who are not ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Independent Directors''), of the Government Fund and the Growth Fund, respectively, voted in accordance with section 15(c) of the Act to approve the New Advisory Agreements, and to submit them to the Funds' shareholders. The shareholder meetings are scheduled to be held on November 6, 1998 for the Government Fund, and on November 19, 1998 for the Growth Fund (the ''Meetings''). Applicants state that proxy materials for the Meetings were mailed to the Government Fund's shareholders on October 15, 1998, and to the Growth Fund's shareholders on October 22, 1998. Applicants state that the Boards will meet in person prior to the commencement of the Interim Period to approve the escrow provisions of the New Advisory Agreements in accordance with section 15(c) of the Act.

5. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Adviser during the Interim Period under the New Advisory Agreements would be paid by the Funds into an interest-bearing escrow account. The escrow agent would release the monies held in the escrow account (including any interest earned): (a) to the Adviser only upon approval of the relevant New Advisory Agreement by the relevant fund's shareholders in accordance with section 15 of the Act; or (b) to the relevant Fund if the Interim Period has ended and the New Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Board of the relevant fund would be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Merger will result in an ''assignment'' of the Existing Advisory Agreements, and that the Existing Advisory Agreements will terminate by their terms and in accordance with the Act.

2. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated, the adviser may continue to serve for 120 days under a written contract that has not been approved by the investment company's shareholders, provided that: (a) The new contract is approved by the board of

[1] Applicants state that if the Merger precedes the issuance of the requested order, the Adviser will continue to serve as investment adviser after the Merger and prior to the issuance of the order in a manner consistent with its fiduciary duty to continue to provide advisory services to the Funds even though shareholder approval of the new arrangements has not yet been secured. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket cost to the Adviser for providing advisory services.

directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company; and (c) neither the adviser nor any controlling person of the investment adviser ''directly or indirectly receives money or other benefit'' in connection with the transaction. Applicants state that they may not rely on rule 15a–4 because the Adviser and its affiliates may be deemed to receive a benefit in connection with the Merger.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction 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 policies and provisions of the Act. Applicants state that the requested relief satisfies this standard.

4. Applicants assert that the terms and timing of the Merger were determined by Hilliard-Lyons and PNC in response to a number of factors beyond the scope of the Act and unrelated to the Funds and the Adviser. Applicants state that a proxy solicitation is a time consuming task, and that it is possible that an insufficient number of votes will have been received by the Meeting, and it may be necessary to adjourn for a period to permit additional shareholders to vote their shares by proxy.

5. Applicants state that the requested relief will allow continuity in investment management services to the Funds during the Interim Period. Applicants state that, during the Interim Period, the Funds would receive the same advisory services, provided in the same manner and at the same fee levels, by substantially the same personnel as they received before the Merger.

Applicant's Conditions

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

1. The New Advisory Agreements will have the same terms and conditions as the Existing Advisory Agreements, except for the effective dates, termination dates, and escrow provisions.

2. Advisory fees earned by the Adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account, (including interest earned on such amounts), will be paid (a) to the Adviser in accordance with the relevant New Advisory Agreement, after the requisite shareholder approval is obtained, or (b) to the relevant Fund, in the absence of such approval with respect to such Fund.

3. The Government Fund and the Growth Fund will hold meetings of shareholders to vote on approval of the New Advisory Agreements on November 6, 1998, and November 19, 1998, respectively, or within the 60-day period following the commencement of the Interim Period (but in no event later than January 31, 1999).

4. The Funds will not bear the costs of preparing and filing the application, or any costs relating to the solicitation of shareholder approval necessitated by the consummation of the Merger.

5. The Adviser will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Directors, to the scope and quality of services provided under the Existing Advisory Agreement. In the event of any material change in personnel providing services pursuant to the New Advisory Agreements, the Adviser will apprise and consult with the Boards to assure that the Boards, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29469 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23510; 812–11146]

Merrill Lynch Private Equity Trust I, et al.; Notice of Application

October 29, 1998.

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

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 17(e) of the Act and under rule 17d–1 under the Act to permit certain joint transactions in accordance with section 17(d) and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to co-invest with other investment vehicles managed by the same investment adviser, and the investment adviser to receive certain compensation in connection with these transactions.

APPLICANTS: ML Private Equity Inc. (together with any investment adviser controlling, controlled by, or under common control with ML Private Equity Inc., the ''Advisers'') and Merrill Lynch Private Equity Trust I (the ''Fund'' and together with any future registered closed-end investment company advised by the Advisers, the ''Funds'').

FILING DATE: The application was filed on May 15, 1998, and amended on September 2, 1998. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

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 November 23, 1998, 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, N.W., Washington, D.C. 20549. Applicants: South Tower, World Financial Center, New York, New York 10080.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. The fund will be a Delaware business trust and a privately offered closed-end investment company registered under the Act. ML Private Equity Inc. will register as an investment adviser under the