procedures for encouraging the maintenance of the PIN's integrity. If a defendant is later charged with a crime based on an electronically signed document, he or she would have every incentive to show a lack of control over (or loss of) the private key or PIN, or in the case of a PIN, that the government failed to protect the PIN on its computer system. Indeed, if that defendant plans to commit fraud, he or she may intentionally compromise the secrecy of the key or PIN, so that the government would later have a more difficult time uniquely linking him or her to the electronic transaction. Promulgating policies and procedures that ensure the integrity of security tools helps counter such fraudulent attempts.

Thus, transactions which appear to be at high risk for fraud, e.g., one-time high-value transactions with persons not previously known to an agency, may require extra safeguards or may not be appropriate for electronic transactions. One way to mitigate this risk might be to require that private keys be generated and kept on hardware tokens, making possession of the token a critical requirement. Another way to guard against fraud is to include other identifying data in the transaction that links the key or PIN to the individual, preferably something not readily available to others.

It is also important to establish that the user of the digital signature or PIN/password is fully aware of obligations he or she is agreeing to by signing at the time of signature. This can be ensured by programming appropriate ceremonial banners into the software application that alert the individual of the gravity of the action she is about to undertake. The presence of such banners can later be used to demonstrate to a court that the user was fully informed of and aware of what he or she was signing.

d. Carefully control access to the electronic data, after receipt, yet make it available in a meaningful and timely fashion. Security measures should be in place that ensure that no one is able to alter a transaction, or substitute something in its place, once it has been received by the agency unless the alteration is a valid correction contained in an electronically certified re-transmission. This can be achieved with a digital signature because it binds the identity of the individual making the signature to the entire document, so any subsequent change would be detected. Thus, the receiving agency needs to take prudent steps to control access to the electronic transaction through such methods as limiting access to the computer database containing the transaction, and performing processing with the data using copies of the transaction rather than the original. The information may be needed for audits, disputes, or court cases many years after the transaction itself took place. Agencies should make plans for storing data and providing meaningful and timely access to it for as long as such access will be necessary.

e. Ensure the ''Chain of Custody.'' Electronic audit trails must provide a chain of custody for the secure electronic transaction that identifies sending location, sending entity, date and time stamp of receipt, and other measures used to ensure the integrity of the document. These trails must be sufficiently complete and reliable to validate the integrity of the transaction and to prove, (a) that the connection between the submitter and the receiving agency has not been tampered with, and (b) how the document was controlled upon receipt.

f. Consider providing an acknowledgment of receipt. The agency's system for receiving electronic transactions may be required by statute to have a mechanism for acknowledging receipt of transactions received and acknowledging confirmation of transactions sent, with specific indication of the party with whom the agency is dealing.

g. Obtain legal counsel during the design of the system. Collection and use of electronic data may raise legal issues, particularly if it is information that bears on the legality of the process, may eventually be needed for proof in court, or involves questions of privacy, confidentiality, or liability.

Section 9. Summary of the Procedures and Checklist

To summarize the process and restate the principles that agencies should employ to evaluate authentication mechanisms (electronic signatures) for electronic transactions and documents, the following steps apply:

a. Examine the current business process that is being considered for conversion to employ electronic documents, forms or transactions, identifying customer needs and demands as well as the existing risks associated with fraud, error or misuse.

b. Identify the benefits that may accrue from the use of electronic transactions or documents.

c. Consider what risks may arise from the use of electronic transactions or documents. This evaluation should take into account the relationships of the parties, the value of the transactions or documents, and the later need for the documents.

d. Consult with counsel about any agency specific legal implications about the use of electronic transactions or documents in the particular application.

e. Evaluate how each electronic signature alternative may minimize risk compared to the costs incurred in adopting an alternative.

f. Determine whether any electronic signature alternative, in conjunction with appropriate process controls, represents a practicable trade-off between benefits on the one hand and cost and risk on the other. If so, determine, to the extent possible at the time, which signature alternative is the best one. Document this determination to allow later reevaluation.

g. Develop plans for retaining and disposing of information, ensuring that it can be made continuously available to those who will need it, for managerial control of sensitive data and accommodating changes in staffing, and for ensuring adherence to these plans.

h. Develop management strategies to provide appropriate security for physical access to electronic records.

i. Determine if regulations or policies are adequate to support electronic transactions and record keeping, or if ''terms and conditions'' agreements are needed for the particular application. If new regulations or policies are necessary, disseminate them as appropriate.

j. Seek continuing input of technology experts for updates on the changing state of technology and the continuing advice of legal counsel for updates on the changing state of the law in these areas.

k. Integrate these plans into the agency's strategic IT planning and regular reporting to OMB.

l. Perform periodic review and re-evaluation, as appropriate.

[FR Doc. 00–10801 Filed 5–1–00; 8:45 am]

BILLING CODE 3110–01–U

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24404; 812–11734]

Marshall Funds, Inc. et al.; Notice of Application

April 25, 2000.

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

ACTION: Notice of an application under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit certain registered management investment companies (a) To pay to an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions, and (b) to permit the investment companies to deposit their uninvested cash and cash collateral received from securities lending transactions in one or more joint accounts that invest in short-term investments.

APPLICANTS: Marshall Funds, Inc. (''Marshall Funds''), M&I Management Corp. (the ''Adviser'') and Marshall & Ilsley Trust Company (''M&I Trust'').

FILING DATES: The application was filed on July 30, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 17, 2000 and should be accompanied by proof of service on applicant, 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC 20549–0609. Applicants, c/o Janet D. Olsen, Esq., Bell, Boyd & Lloyd LLC, Three First National Plaza, 70 West Madison Street, Chicago, Illinois 60602.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Marshall Funds, a Wisconsin corporation, is registered under the Act as an open-end management investment company and consists of eleven separate series. The Adviser, a wholly-owned subsidiary of Marshall & Ilsley Corporation (''M&I Corp.''), a bank holding company, is registered under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to each series of Marshall Funds. M&I Trust, also a wholly-owned subsidiary of M&I Corp., is the custodian for Marshall Funds. Applicants also request relief for each future series of Marshall Funds and any other registered management investment companies or series thereof, whether currently existing or organized in the future, that are advised or subadvised by the Adviser, or an entity controlling, controlled by, or under common control with, the Adviser (together, the ''Adviser'') (collectively, ''Future Funds''). Marshall Funds and the Future Funds are collectively referred to as the ''Funds''.[1]

2. Each of the Funds is, or will be, permitted by its investment objectives, policies, and restrictions to lend its portfolio securities. Several of the Funds currently participate in a securities lending program (the ''Program'') administered by M&I Trust, which acts as lending agent. Under the Program, M&I Trust enters into agreements with certain unaffiliated borrowers that have been pre-approved by the Fund or the Adviser (''Borrowers'') that wish to borrow securities owned by a Fund. Applicants represent that the duties performed by M&I Trust as lending agent will not exceed those set forth in *Norwest Bank, N.A.* (pub. avail. May 25, 1995).

3. With respect to loans that are collateralized by cash (''Cash Collateral''), the Borrower is entitled to receive a fixed fee based on the amount of Cash Collateral. The Fund is compensated on the spread between the net amount earned on the investment of the Cash Collateral and the Borrower's fee. In the case of collateral other than cash, the Fund receives a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities specified in the loan agreement. Applicants seek relief to permit the funds to pay, and M&I Trust to accept, fees based on a share of the revenues generated from securities lending transactions.

4. Securities lending guidelines adopted by each Fund authorize and instruct M&I Trust, at the direction of the Adviser, to invest Cash Collateral on behalf of the Fund in investment options pre-approved by the Fund or the Adviser. The Funds also may be expected to have uninvested cash (''Uninvested Cash''), which may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors (Uninvested Cash, together with Cash Collateral, ''Cash Balances'').

5. Applicants propose to deposit Cash Balances into one or more joint accounts (''Joint Accounts'') established at M&I Trust for the purpose of investing in one or more of the following: (a) repurchase agreements ''collateralized fully'' as defined in rule 2a–7 under the Act,[2] (b) U.S. dollar-denominated commercial paper (including securities issued or backed by the U.S. Government or its agencies or instrumentalities), and (c) any other short-term money market instruments that constitute ''Eligible Securities'' (as defined in rule 2a–7 under the Act) (collectively, ''Short-Term Investments'').

6. Any repurchase agreements entered into through a Joint Account will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and represent that repurchase agreement transactions will comply with future positions of the Commission to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the commission sets forth guidelines with respect to other Short-Term Investments made through the Joint Accounts, the investments will comply with those guidelines.

7. Each Fund will invest through a Joint Account only in conformity with its own investment objectives, policies and restrictions. The Adviser will have sole responsibility for determining a Fund's participation in a joint Account,

[1] The requested relief would apply to Funds that are subadvised by the Adviser only to the extent that the Adviser manages the Cash Balances (as later defined) of those Funds. All existing entities that currently intend to rely on the requested relief have been named as applicants. Any existing or future entity that will rely on the relief in the future will comply with the terms and conditions contained in the application.

[2] The Joint Accounts will enter into ''hold-in-custody'' repurchase agreements (i.e., repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only where cash is received late in the business day and otherwise would be unavailable for investments.

subject to standards and procedures established by the Fund's board of directors (''Board''). Neither the Adviser nor M&I Trust will receive any additional fees from the Funds for the administration of the Joint Accounts.

Applicants' Legal Analysis

A. Lending Agent Fees

1. Section 17(b) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

2. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person and, if the other person is an investment company, its investment adviser. The adviser is an affiliated person of each Fund. Because M&I Trust and the Adviser are under the common control of M&I Corp., M&I Trust is an affiliated person of an affiliated person of each Fund. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit each Fund to pay, and M&I to accept, fees based on a share of the revenues generated from securities lending transactions.

3. Applicants propose that each Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with M&I Trust, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of M&I Trust as lending agent for a Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the directors who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Disinterested Directors or Trustees'') will determine that (i) the contract with M&I Trust is in the best interests of the Fund and its shareholders; (ii) the services to be performed by M&I Trust are required for the Fund; (iii) the nature and quality of the services provided by M&I Trust are at least equal to those provided by others offering the same or similar services; and (iv) the fees charged by M&I Trust are fair and reasonable in light of the usual and customary charges imposed by other for services of the same nature and quality.

(b) Each Fund's contract with M&I Trust for lending agent services will be reviewed at least annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Director or Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby M&I Trust will be compensated as lending agent based on a percentage of the revenue generated by a Fund's participation in the Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the Disinterested Directors or Trustees, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modifications) described in the application or otherwise followed in connection with lending securities pursuant to the Program and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the Borrower, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Cash Balances in the Joint Accounts

1. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants state that the Funds, by participating in the proposed Joint Accounts, M&I Trust, by administering the proposed Joint Accounts, and the Adviser, by acting as the adviser for the Joint Accounts, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1 under the Act. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the Act to permit them to participate in the proposed Joint Accounts.

2. Applicants submit that the requested relief meets the standards of rule 17d–1 for issuance of an order. Each Fund will participate in any Joint Account on the same basis as every other Fund, subject to and in conformity with its own investment objectives, polices, and restrictions. Each Fund's liability on any Short-Term Investment would be limited to its own interest in such investment. Applicants also assert that the proposed method of operating the Joint Accounts will not result in any conflicts of interest among any of the Funds, M&I Trust and the Adviser.

3. Applicants state that the operation of the Joint Accounts could result in certain benefits. Applicants state that, although M&I Trust may gain some benefit from the administrative convenience of the Funds investing in Short-Term Investments on a joint basis, and may experience some reduction in clerical costs, the Funds will be the primary beneficiaries due to increase efficiencies realized through use of the Joint Accounts, the possible increase in rates of return available, and, for some Funds, the opportunity to invest in Short-Term Investments

Applicants' Conditions

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

A. Securities Lending

1. The securities lending program of each Fund will comply with all present and future applicable guidelines of the Commission and staff regarding securities lending arrangements.

2. The approval of a Fund's Board, including a majority of the Disinterested Directors or Trustees, shall be required for the initial and subsequent approvals of M&I Trust's service as lending agent for the Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Fund, and for any periodic review of loan transactions for which M&I Trust acted as lending agent pursuant to the Program.

B. Joint Accounts

1. The Joint Accounts will not be distinguishable from any other accounts maintained by a Fund with M&I Trust

except that Cash Balances from various Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management and investment by each Fund of its Cash Balances.

2. Short-Term Investments that are repurchase agreements will be ''collateralized fully'' as defined in rule 2a–7 under the Act and all Short-Term Investments will have a remaining maturity of 397 days or less as calculated in accordance with Rule 2a–7 under the Act. Uninvested Cash in a Joint Account will be invested in Short-Term Investments with remaining maturities of 90 days or less, or if repurchase agreements, with remaining maturities of 60 days or less.

3. All Short-Term Investments invested in through the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable Commission releases, rules or orders.

4. Each Fund that is a money market fund will use the dollar-weighted average maturity of the Short-Term Investments in the Joint Accounts in which the Fund has an interest for the purpose of computing that Fund's average portfolio maturity with respect to the portion of the assets held by it in the Joint Account.

5. To ensure that there will be no opportunity for any Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its share of the entire balance at any time, provided that the Adviser determines that such draw down would have no significant adverse impact on any other Fund in that Joint Account. Each Fund's decision to invest through the Joint Accounts would be solely at its option, and no Fund will be obligated to invest in a Joint Account or maintain a minimum balance in a Joint Account. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

6. The Adviser will administer the investment of Cash Balances in, and the operation of, the Joint Accounts as part of its general duties under its advisory agreements with the Funds and neither M&I Trust nor the Adviser will receive additional or separate fees for administering the Joint Accounts.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

8. The Board for each Fund investing in Short-Term Investments through the Joint Accounts will adopt procedures pursuant to which the Joint Accounts will operate, which procedures will be reasonably designed to provide that the requirements of the requested order will be met. In addition, not less frequently than annually, the Board will evaluate the Joint Account arrangements, will determine whether the Joint Accounts have been operated in accordance with the adopted procedures, and will authorize a Fund's continued participation in the Joint Accounts only if the Board determines that there is a reasonable likelihood that such continued participation would benefit that Fund and its shareholders.

9. Investment in a Joint Account by a particular Fund will be consistent with the Fund's investment objectives and policies.

10. The Adviser and M&I Trust will maintain records documenting, for any given day, each Fund's aggregate investment in a Joint Account and each Fund's pro rata share of each Short-Term Investment made through such Joint Account. The records maintained for each Fund shall be maintained in conformity with section 31 of the Act and the rules and regulations thereunder.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) The Adviser believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Funds in the Joint Account because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. Any Short-Term Investment (or any fractional portion thereof), however, may be sold on behalf of some or all of the Funds prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Funds and the transaction will not adversely affect other Funds participating in that Joint Account. In no case would an early termination by less than all Funds be permitted if it would reduce the principal amount or yield received by other Funds in a particular Joint Account or otherwise adversely affect the other Funds. Each Fund in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and will be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either case, such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, if the Short-Term Investment or fractional interest therein cannot be sold pursuant to the preceding condition.

13. Every Fund in the Joint Accounts will not necessarily have its Cash Balances invested in every Short-Term Investment. However, to the extent that a Fund's Cash Balances are applied to a particular Short-Term Investment, the Fund will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such Short-Term Investment purchased with Cash Balances contributed by the Fund.

14. The Joint Accounts will be established as one or more separate cash accounts on behalf of the Funds at M&I Trust. Each Fund may deposit daily all or a portion of its Cash Balances into the Joint Accounts. Each Fund whose regular custodian is a custodian other than M&I Trust Fund and that wishes to participate in a Joint Account would appoint M&I Trust as a sub-custodian for the limited purposes of: (a) Receiving and disbursing Cash Balances; (b) holding any Short-Term Investments; and (c) holding any collateral received from a transaction effected through a Joint Account. All Funds that so appoint M&I Trust will have taken all necessary actions to authorize M&I Trust as its legal custodian, including all actions required under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10857 Filed 5–1–00; 8:45 am]

BILLING CODE 8010–01–M