the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to reliance on the requested order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Funds of Funds' Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Underlying Fund by the Funds of Funds' Adviser, or an affiliated person of the Fund of Funds' Adviser, other than any advisory fees paid to the Fund of Funds' Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Any Fund of Funds' Sub-Adviser will waive fees otherwise payable to the Fund of Funds' Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Fund of Funds' Sub-Adviser, or an affiliated person of the Fund of Funds' Sub-Adviser, other than any advisory fees paid to the Fund of Funds' Sub-Adviser or its affiliated person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Fund of Funds' Sub-Adviser. In the event that the Fund of Funds' Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–23691 Filed 10–6–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–28431; 812–13540]**

## Eaton Vance Floating-Rate Income Trust, et al.; Notice of Application

October 2, 2008.

**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 sections 18(a)(1)(A) and (B) of the Act.

**APPLICANTS:** Eaton Vance Floating-Rate Income Trust, Eaton Vance Senior Floating-Rate Trust, Eaton Vance Senior Income Trust, Eaton Vance Credit Opportunities Fund, and Eaton Vance Limited Duration Income Fund (each, a ''Fund'' and collectively, ''Funds'').

**SUMMARY OF APPLICATION:** Applicants request an order (''Order'') granting an exemption from sections 18(a)(1)(A) and (B) of the Act for a two-year period immediately following the date of the Order. The Order would permit each Fund to issue debt securities subject to asset coverage of 200% that would be used to refinance all of the Fund's issued and outstanding auction preferred shares (''APS Shares''). The Order also would permit each Fund to declare dividends or any other distributions on, or purchase, capital stock during the term of the Order, provided that any class of senior securities representing indebtedness has asset coverage of at least 200% after deducting the amount of such transaction.

**FILING DATES:** The application was filed on June 10, 2008, and amended on July 2, 2008, July 29, 2008, and September 2, 2008.

**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 October 22, 2008, 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: c/o Frederick S. Marius, Chief Legal Officer, Eaton Vance Management, 255 State Street, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Janet M. Grossnickle, Assistant Director, at (202) 942–6821 (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 SEC's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

### Applicants' Representations

1. Each of the Funds is organized as a Massachusetts business trust and is a closed-end management investment company registered under the Act. Each Fund is advised by Eaton Vance Management (''Eaton Vance'') and has issued and outstanding a class of common shares and a class of one or more series of APS Shares.

2. Applicants state that the Funds issued their outstanding APS Shares for purposes of investment leverage to augment the amount of investment capital available for use in the pursuit of their investment objectives. Applicants state that, through the use of leverage, the Funds seek to enhance the investment return available to the holders of their common shares by earning a rate of portfolio return (which includes the return obtained from securities purchased from the proceeds of APS Share offerings) that exceeds the dividend rate that the Funds pay to holders of the APS Shares. Applicants represent that APS shareholders are entitled to receive a stated liquidation preference amount of $25,000 per share (plus any accumulated but unpaid dividends) in any liquidation, dissolution, or winding up of the relevant Fund before any distribution or payment to holders of the Fund's common shares. They state that dividends declared and payable on APS Shares have a similar priority over dividends declared and payable on the Funds' common shares. In addition, applicants state that APS Shares are ''perpetual'' securities and are not subject to mandatory redemption by a Fund (provided certain asset coverage tests are met). Further, applicants state that APS Shares are redeemable at each Fund's option.

3. Applicants state that prior to February 2008, dividend rates on the APS Shares for each dividend period were set at the market clearing rate determined through an auction process that brought together bidders, who sought to buy APS Shares, and holders of APS Shares, who sought to sell their APS Shares. Applicants explain that their by-laws provide that if an auction fails to clear (because of an imbalance of sell orders over bids), the dividend payment rate over the next dividend period is set at a specified maximum applicable rate (the ''Maximum Rate'') determined by reference to a short-term market interest rate (such as LIBOR or a commercial paper rate). Applicants state that an unsuccessful auction is not a default; the relevant Applicant continues to pay dividends to all holders of APS Shares, but at the specified Maximum Rate rather than a market clearing rate.

4. Applicants state that if investors did not purchase all of the APS Shares tendered for sale at an auction, dealers historically would enter into the auction and purchase any excess shares to prevent the auction from failing. Applicants represent that this auction mechanism generally provided readily available liquidity to holders of APS Shares for almost twenty years. Applicants believe that many investors invested short-term cash balances in APS Shares believing they were safe short-term investments and, in many cases, the equivalent of cash.

5. Applicants state that in February 2008, the financial institutions that historically provided ''back stop'' liquidity to APS Share auctions stopped participating in them and the auctions began to fail. Applicants state that beginning on February 13, 2008, all closed-end funds advised by Eaton Vance that had outstanding APS Shares (including the Funds) experienced auction failures due to an imbalance between buy and sell orders. Applicants also state that there is no established secondary market that would provide holders of APS Shares with the liquidation preference of $25,000 per share. Applicants state that four of the five Funds to date have redeemed approximately two-thirds of their APS Shares with borrowings from a commercial paper conduit facility, but have been prohibited from redeeming their remaining APS Shares because, among other reasons, they would not have the 300% asset coverage required by section 18(a)(1) of the Act after a full redemption of the APS Shares. As a result, applicants state that there is currently no reliable mechanism for holders of APS Shares to obtain liquidity, and believe that, industry-wide, the current lack of liquidity is causing distress for a substantial number of APS shareholders and creating severe hardship for many investors.

6. Applicants seek relief for a period of two years to facilitate temporary borrowings by the Funds that would enhance their ability to provide a liquidity solution to the holders of their APS Shares in the near term [1] while they seek a more permanent form of replacement leverage.[2] Because of the limited availability of debt financing in the current, severely constrained capital markets, the applicants believe that the negotiation, execution and closing of a borrowing transaction to replace the leverage currently represented by the APS Shares, if it can be effected, might take several months following the issuance of the Order. Once the debt incurred in replacement of the APS Shares is in place, it is uncertain whether and when the applicants will be able to issue LPP Shares to replace the debt, or how quickly the securities and capital markets will return to conditions that would enable the applicants to achieve compliance with the asset coverage requirements that would apply in the absence of the Order through some other means. In light of these factors, and given the continuing unsettled state of the securities and capital markets, which makes it impossible to establish a precise schedule for consummating capital markets transactions, the applicants believe that a two-year exemption period is reasonable and appropriate. Each Fund's refinancing of APS Shares would be subject to the Fund obtaining any necessary approval of changes to the Fund's fundamental investment policies and approval of the refinancing arrangements by the Fund's board of trustees (''Board'').

**Applicants' Legal Analysis**

1. Section 18(a)(1)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security representing indebtedness, or to sell such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 300% immediately after issuance or sale. Section 18(a)(2)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security that is a stock, or to sell any such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 200% immediately after such issuance or sale.[3]

2. Section 18(a)(1)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own capital stock unless its outstanding indebtedness will have an asset coverage of at least 300% immediately after deducting the amount of such dividend, distribution or

[1] Applicants note that the cost of the replacement leverage is expected, over time, to be lower than the total cost of APS Shares based on the Maximum Rates applicable to the APS Shares of those Funds.

[2] Eaton Vance and its affiliates, including the Funds, have recently obtained no-action relief from the Commission staff in connection with Liquidity Protected Preferred Shares (''LPP Shares''), a new type of preferred stock that the Funds potentially would issue to supplement or replace the existing APS Shares. *See* Eaton Vance Management, SEC No-Action Letter (June 13, 2008).

[3] Section 18(h) of the Act defines asset coverage of a senior security representing indebtedness of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer. The section defines asset coverage of the preferred stock of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer plus the amount the class of senior security would be entitled to on involuntary liquidation.

purchase price.[4] Section 18(a)(2)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own common stock unless its outstanding preferred stock will have an asset coverage of at least 200% immediately after deducting the amount of such dividend, distribution or purchase price.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act if and to the extent necessary or 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.

4. Applicants request that the Commission issue an Order under section 6(c) of the Act to exempt each Fund from the 300% asset coverage requirements set forth in sections 18(a)(1)(A) and (B) of the Act. Specifically, the Funds seek relief from the section 18 asset coverage requirements for senior securities representing indebtedness for a period not to exceed two years from the date on which the requested Order is issued (the ''Exemption Period'') to permit the Funds to refinance any outstanding APS Shares issued prior to February 1, 2008 with debt so long as they have 200% asset coverage, rather than the 300% asset coverage that would ordinarily apply under section 18 to senior securities representing indebtedness, (a) when they incur that debt, and (b) when they declare dividends or any other distributions on, or purchase, their capital stock, after deduction of the amount of such dividend, distribution or purchase price. Applicants state that, except as permitted under the requested Order, if issued, the Funds would meet all of the asset coverage requirements of section 18(a) of the Act. In addition, applicants state that each Fund that borrows in reliance on the Order will either pay down or refinance the debt within the Exemption Period so that the Fund would, at the expiration of the Exemption Period and thereafter, comply with the applicable asset coverage requirements (200% for equity or 300% for debt) under section 18 of the Act.

5. Applicants state that section 18 reflects congressional concerns regarding preferential treatment for certain classes of shareholders, complex capital structures, and the use of excessive leverage. Applicants submit that another concern was that senior securities gave the misleading impression of safety from risk. Applicants believe that the request for temporary relief is necessary, appropriate and in the public interest and that such relief is consistent with the protection of investors and the purposes intended by the policy and provisions of section 18.

6. Applicants note that the illiquidity of APS Shares is a unique, exigent situation that is posing urgent, and in some cases devastating, hardships on APS shareholders. Applicants represent that the proposed replacement of the APS Shares with debt would provide liquidity for the Funds' APS shareholders while the Funds continue their efforts to obtain a more permanent form of financing (such as through the issuance of LPP Shares) that fully complies with the asset coverage requirements of section 18.[5]

7. Applicants state that the requested Order would permit the Funds to continue to provide their common shareholders with the enhanced returns that leverage may provide. Applicants also represent that the Order would help avoid the potential harm to common shareholders that could result if the Funds were to deleverage their portfolios in the current difficult market environment[6] or that could result if a reduction in investment return reduced the market price of common shares.

8. Applicants believe that the interests of both classes of the Funds' current investors would be well served by the requested order—the APS shareholders because they would achieve the liquidity that the market currently cannot provide (as well as full recovery of the liquidation value of their shares) and the common shareholders because the cost of the new form of leverage would, over time, be lower than that of the total cost of the APS Shares based on their Maximum Rates and the adverse consequences of deleveraging would be avoided.

9. Applicants represent that the proposed borrowing would be obtained from banks, insurance companies or qualified institutional buyers (as defined in Rule 144(a)(1) under the Securities Act of 1933) who would be capable of assessing the risk associated with the transaction. Applicants also state that, to the extent the Act's asset coverage requirements were aimed at limiting leverage because of its potential to magnify losses as well as gains, they believe that the proposal would not unduly increase the speculative nature of the Funds' common shares because the relief is temporary and the Funds would be no more highly leveraged if they replace the existing APS Shares with borrowing.[7] Applicants also state that the proposed liquidity solution would not make the Funds' capital structure more complex, opaque, or hard to understand or result in pyramiding or inequitable distribution of control.

10. Applicants state that the current state of the credit markets, which has affected the APS Shares, is an historic event of unusual severity, which requires a creative and flexible response on the part of both the public and private sectors. Applicants believe that these issues have created an urgent need for limited, quick, thoughtful and responsive solutions. Applicants believe that the request meets the standards for exemption under section 6(c) of the Act.

**Applicants' Conditions**

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

1. Each Fund that borrows subject to 200% asset coverage under the order will do so only if such Fund's Board, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) (''Independent Trustees''), shall have determined that such borrowing is in the best interests of such Fund, its common shareholders, and its APS shareholders. Each Fund shall make and preserve for a period of not less than six years from the date of such determination, the first two years in an

[4] An exception is made for the declaration of a dividend on a class of preferred stock if the senior security representing indebtedness has an asset coverage of at least 200% at the time of declaration after deduction of the amount of such dividend. *See* section 18(a)(1)(B) of the Act.

[5] *See supra* note 2.

[6] Applicants state that the bulk of each Fund's portfolio is in floating rate senior secured loans. Applicants believe that it is difficult to sell such loans at par value in the current market because of market makers' own impaired capital positions. Applicants expect, however, that the loans generally will be repaid in full as they come due. Applicants thus believe it would be disadvantageous to sell the loans at less than par into the current market.

[7] Applicants acknowledge that managing any portfolio that relies on borrowing for leverage entails the risk that, when the borrowing matures and must be repaid or refinanced, an economically attractive form of replacement leverage may not be available in the capital markets. For that reason, any portfolio that relies on borrowing for leverage is subject to the risk that it may have to deleverage, which could be disadvantageous to the portfolio's common shareholders. Applicants therefore state that they regard leveraging through borrowing as potentially a temporary, interim step, with the issuance of new preferred stock as a possible longer-term replacement source of portfolio leverage, such as LPP Shares.

easily accessible place, minutes specifically describing the deliberations by the Board and the information and documents supporting those deliberations, the factors considered by the Board in connection with such determination, and the basis of such determination.

2. Upon expiration of the Exemption Period, each Fund will have asset coverage of at least 300% for each class of senior security representing indebtedness.

3. The Board of any Fund that has borrowed in reliance on the order shall receive and review, no less frequently than quarterly during the Exemption Period, detailed progress reports prepared by management (or other parties selected by the Independent Trustees) regarding and assessing the efforts that the applicant has undertaken, and the progress that the applicant has made, towards achieving compliance with the appropriate asset coverage requirements under section 18 by the expiration of the Exemption Period. The Board, including a majority of the Independent Trustees, will make such adjustments as it deems necessary or appropriate to ensure that the applicant comes into compliance with section 18 of the Act within a reasonable period of time, not to exceed the expiration of the Exemption Period. Each Fund will make and preserve minutes describing these reports and the Board's review, including copies of such reports and all other information provided to or relied upon by the Board, for a period of not less than six years from the date of such determination, the first two years in an easily accessible place.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–23672 Filed 10–6–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28428; 813–00355]**

## HLHZ Investments II, LLC and Houlihan, Lokey, Howard & Zukin, Inc.; Notice of Application

September 30, 2008.

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

**ACTION:** Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

*Summary of Application:* Applicants request an order to exempt certain limited liability companies and other investment vehicles established primarily for the benefit of eligible employees of Houlihan, Lokey, Howard & Zukin, Inc. (''HLHZ'') and its affiliates from certain provisions of the Act. Each limited liability company or other investment vehicle will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

*Applicants:* HLHZ Investments II, LLC (the ''Initial Fund'') and HLHZ.

*Filing Dates:* The application was filed on August 26, 2004 and amended on November 17, 2004, March 14, 2008, and June 20, 2008. 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 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 October 27, 2008, 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 1930 Century Park West, Los Angeles, CA 90067–6802.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, at (202) 551–6873 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (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 Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

**Applicants' Representations**

1. HLHZ is an investment banking firm organized under the laws of the State of California. HLHZ provides a range of investment banking services, including mergers and acquisitions, financing, financial opinions and advisory services and financial restructuring. HLHZ and its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''1934 Act''), are referred to collectively as ''HLHZ Group'' and each entity within HLHZ Group is referred to individually as a ''HLHZ Group entity.''

2. The Initial Fund is a California limited liability company. HLHZ Group may offer in the future other investment vehicles identical in all material respects to the Initial Fund (other than investment objectives and strategies and form of organization) (together with the Initial Fund, the ''Funds''). Each Fund will be a limited liability company or other investment vehicle formed as an ''employees' security company'' within the meaning of section 2(a)(13) of the Act. Each Fund will operate as a non-diversified, closed-end management company. The Funds have been or will be established primarily for key employees of the HLHZ Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate its recruitment of high caliber professionals.

3. Each Fund will have a managing member or general partner (''Manager'') that is an HLHZ Group entity and that will manage, operate, and control such Fund. The Manager will be registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') if required by applicable law. HLHZ, the Manager of the Initial Fund, is exempt from registration as an investment adviser under the Advisers Act. The Manager will be authorized to delegate investment management responsibility to a HLHZ Group entity or a committee of HLHZ Group employees. The ultimate responsibility for the Funds' investments will remain with the Manager. The Manager may be entitled to receive compensation or a performance-based fee (a ''carried interest'').[1]

[1] A ''carried interest'' is an allocation to the Manager based on net gains in addition to the amount allocable to such entity in proportion to its capital contributions. A Manager that is registered as an investment adviser under the Advisers Act may charge a carried interest only if permitted by rule 205–3 under the Advisers Act. Any carried interest paid to a Manager that is not registered under the Advisers Act will comply with section