



EXECUTIVE DIRECTOR

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 12, 2004

Mark J. Dorsey, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2505

**Re: American Express Financial Advisors Inc.—Waiver Request under
Regulation A and Rule 505 of Regulation D**

Dear Mr. Dorsey:

This is in response to your letter dated today, written on behalf of American Express Financial Advisors Inc. (the "Firm") and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arise by virtue of the entry today of a Commission order under Section 15(b) of the Securities Exchange Act of 1934 naming the Firm as respondent (the "Order").

For purposes of this letter, we have assumed as facts the representations set forth in your letter. We also have assumed that the Firm will comply with the Order.

On the basis of your letter, the Commission, pursuant to delegated authority, has determined that you have made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of the entry of the Order. Accordingly, the relief described above from the disqualifying provisions of Regulation A and Rule 505 of Regulation D is hereby granted.

Sincerely,

A handwritten signature in cursive script that reads "Gerald J. Laporte".

Gerald J. Laporte
Chief, Office of Small Business Policy

Fried, Frank, Harris, Shriver & Jacobson LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2505
Tel: 202.639.7000
Fax: 202.639.7003
www.friedfrank.com

Direct Line: 202.639.7173
Email: dorsema@ffhsj.com

February 12, 2004



BY HAND

Mauri L. Osheroff, Esq.
Associate Director, Regulatory Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549

Re: In The Matter of Certain Mutual Fund Breakpoint Discounts (MHO-9791)

Dear Ms. Osheroff:

On behalf of our client, American Express Financial Advisors Inc. ("AEFA"),¹ we hereby respectfully request, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification that may arise pursuant to Rules 262 or 505 with respect to any issuer identified in Rule 262(b) or Rule 505(b)(2)(iii) as a result of an administrative action brought by the Securities and Exchange Commission ("Commission") against AEFA. We respectfully request that these waivers be granted effective upon the entry of the Final Order (defined below).

¹ AEFA is both a registered broker dealer and investment adviser engaged in a general securities business.

Mauri L. Osheroff, Esq.
February 12, 2004
Page 2

BACKGROUND

AEFA and the staffs of the Commission, and the National Association of Securities Dealers, Inc. ("NASD") have agreed to a settlement of the above-referenced investigation, which relates to breakpoint discounts to which customers of AEFA who purchased mutual funds were entitled. Specifically, AEFA has consented to the entry of a final order (the "Final Order") censuring AEFA pursuant to Section 15(b)(4) of the Exchange Act and requiring AEFA to cease-and-desist from violations of certain federal securities laws and rules of the NASD. Pursuant to the terms of the consent, AEFA, without admitting or denying the allegations in the Commission's administrative action filed in connection therewith, consented to the entry of a Final Order requiring it to cease-and-desist from certain violations of Section 17(a)(2) of the Securities Act, Rule 10b-10 of the Exchange Act, and NASD Rule 2110.

In addition, AEFA, pursuant to the terms of the NASD's Acceptance, Waiver and Consent, consented to an undertaking to, among others, (a) provide written notification to each customer who purchased front-end load mutual fund shares through AEFA from January 1, 1999 that AEFA experienced a problem delivering breakpoint discounts, and that as a result, the customer may be entitled to a refund, (b) perform a trade-by-trade analysis of all front-end load mutual fund purchases of \$2,500 or more from January 1, 2001, (c) provide refunds to all customers who did not receive all applicable breakpoint discounts, (d) provide a report on AEFA's refund program to the NASD and (e) provide a certification within 6 months after the date of the Final Order that AEFA has implemented procedures and a system to ensure that customers receive appropriate breakpoint discounts.

AEFA, as part of the settlement with the SEC and NASD, also agreed to pay disgorgement and prejudgment interest of \$3,706,693 to its customers and pay an equivalent fine.

DISCUSSION

Regulations A and Rule 505 of Regulation D prohibit issuers from issuing securities in reliance on the exemptions if any director, officer, or general partner of the issuer, beneficial owner of 10 percent or more of any class of an issuer's equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter or placement agent of the securities to be offered, or any partner, director, or officer of any such underwriter is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. 17 C.F.R. § 230.262(b)(3). We understand that the Final Order may result an issuer being disqualified from relying on Regulations A or Rule 505 of Regulation D, if AEFA serves in one of the capacities

Mauri L. Osheroff, Esq.
February 12, 2004
Page 3

described above. The Commission may waive these disqualifications upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied.² See 17 C.F.R. §§ 230.262;230.505(b). Accordingly, AEFA hereby requests a waiver of any disqualifications that may arise under Regulation A and Rule 505 of Regulation D, effective upon the entry of the Final Order. For the reasons discussed below, we believe that it is not necessary under the circumstances that the exemption be denied.

The conduct alleged in the Final Order does not relate to any offerings made under Regulations A or Rule 505 of Regulation D. Rather, it is confined to breakpoint discounts to which mutual fund customers of AEFA were entitled. Further, none of the undertakings or requirements of the settlement would apply to offerings under Regulations A or Rule 505 of Regulation D or to any activities that AEFA might conduct in connection with such activities.

The disqualification of AEFA from the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given that the violations alleged in the Final Order are not related to the activities of AEFA in connection with Regulations A or Rule 505 of Regulation D, as noted above, and given the extent to which the disqualification could adversely affect the business operations of AEFA. Such a disqualification would, we believe, have an adverse impact on third parties that may retain AEFA and its affiliates in connection with transactions that rely on these exemptions.

Finally, AEFA has a strong record of compliance with the securities laws. AEFA conducted a "self-assessment" of its record of delivering breakpoint discounts to customers and fully cooperated with the inquiry into this matter by the SEC and NASD. In addition, AEFA expects to undertake to implement various policies and procedures that are reasonably designed to help prevent the types of activities that were the subject of the Final Order.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that AEFA has shown good cause that relief should be granted. Accordingly, we

² See, e.g., *Credit Suisse First Boston*, SEC No-Action Letter (pub. avail. Jan. 29, 2002); *Stephens, Inc.*, SEC No-Action Letter (pub. avail. Dec. 27, 2001); *Dain Rauscher, Inc.*, SEC No-Action Letter (pub. avail. Sept. 27, 2001); *Legg Mason Wood Walker, Inc.*, SEC No-Action Letter (June 11, 2001); *Prudential Securities, Inc.*, SEC No-Action Letter (pub. avail. Jan. 29, 2001); *Tucker Anthony, Inc.*, SEC No-Action Letter (pub. avail. Dec. 21, 2000).

Fried, Frank, Harris, Shriver & Jacobson LLP

Mauri L. Osheroff, Esq.
February 12, 2004
Page 4

respectfully urge the Commission, and the Division of Corporation Finance pursuant to its delegated authority, to waive, pursuant to Rule 262 and Rule 505(b)(2)(iii)(C), the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent that they may be applicable, as a result of the Final Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. Dorsey", written in a cursive style.

Mark J. Dorsey

cc: Colleen Curran, Esq.