



DIVISION OF
CORPORATION FINANCE

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

May 31, 2006

Michael J. Rivera, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

**Re: Merrill Lynch, Pierce, Fenner & Smith Incorporated, Administrative Proceeding
File No. 3-12310—Waiver Request under Regulation A and Rule 505 of Regulation
D**

Dear Mr. Rivera:

This is in response to your letter dated today, written on behalf of Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) 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 (“Securities Act”). You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arose by virtue of the entry of an order dated today against Merrill Lynch and others as respondents by the Securities and Exchange Commission in the referenced administrative proceeding (the “Order”). The disqualifications arose because the Order was issued under Section 15(b) of the Securities Exchange Act of 1934 and contained paragraphs numbered IV.D and IV.E, which ordered Merrill Lynch, among other things, to provide written descriptions of its material auction practices and procedures for auction rate securities. The order also was issued under Section 8A of the Securities Act and also censured Merrill Lynch, ordered Merrill Lynch to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, and ordered Merrill Lynch to pay a civil money penalty in the amount of \$1,500,000.

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Order against Merrill Lynch. We have also assumed that Merrill Lynch has complied and will continue to comply with the Order.

On the basis of your letter, I have determined that Merrill Lynch has 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 entry of the Order against Merrill Lynch. Accordingly, pursuant to delegated authority, Merrill Lynch is granted relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 of Regulation D that arose as a result of entry of the Order against it.

Very truly yours,

Gerald J. Laporte
Chief, Office of Small Business Policy

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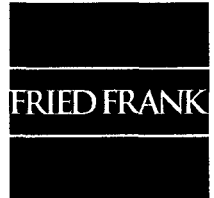
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May 31, 2006

By Overnight Courier and Electronic Mail

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
Mail Stop 3628
100 F Street, N.E.
Washington, DC 20549-3628



Re: Auction Rate Securities Practices (File No. HO-09954)

Dear Mr. Laporte:

On behalf of our client, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"),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 ("Securities Act"), waivers of any disqualification that may arise pursuant to Rule 262 or Rule 505 with respect to MLPF&S, any of its affiliated entities, or any issuer identified in Rule 262(b) as a result of the administrative action brought by the Securities and Exchange Commission ("Commission") against MLPF&S. We respectfully request that these waivers be granted effective upon the entry of the administrative order described below. It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers.

BACKGROUND

MLPF&S has consented, as part of a settlement with the Staff of the Commission in the above-captioned matter, to the entry of a Commission order ("Order") pursuant to Section 8A of the Securities Act and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") requiring MLPF&S to cease and desist from committing or causing any violations and any future violations of Section

¹ MLPF&S is a registered broker-dealer engaged in a full-service securities business, including retail and institutional sales, investment banking services, trading and research.

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17(a)(2) of the Securities Act, censuring MLPF&S, imposing a civil money penalty in the amount of \$1.5 million, and ordering MLPF&S to comply with certain undertakings. The Order includes findings, which MLPF&S neither admits nor denies, that MLPF&S violated Section 17(a)(2) of the Securities Act by managing auctions for auction rate securities in ways that were not adequately disclosed or that did not conform to disclosed procedures.

DISCUSSION

We understand that the entry of the Order may result in the disqualification of MLPF&S, its affiliated entities, and issuers identified in Rule 262(b) from relying on certain exemptions under Regulation A and Rule 505 of Regulation D insofar as the Order may be deemed to cause MLPF&S to be disqualified pursuant to 17 C.F.R. § 230.262(b)(3). *See also* 17 C.F.R. § 230.505(b). The Commission may waive these exemption 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, MLPF&S 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 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 Order does not relate to any offerings pursuant to Regulation A or D. Rather, the alleged violations relate primarily to MLPF&S's management of auctions of auction rate securities in ways that were not adequately disclosed or that did not conform to disclosed procedures. Further, none of the requirements of the Order directly apply to offerings under Regulation A or D or to any activities that MLPF&S might conduct in connection with such offerings.

² *See, e.g., Adams Harkness, Inc.*, SEC No-Action Letter (pub. avail. Aug. 25, 2004); *Morgan Keegan & Co., Inc.*, SEC No-Action Letter (pub. avail. Aug. 25, 2004); *Needham & Company, Inc.*, SEC No-Action Letter (pub. avail. Aug. 25, 2004); *SG Cowen & Co., Inc.*, SEC No-Action Letter (pub. avail. Aug. 25, 2004); *Raymond James Financial Services, Inc.*, SEC No-Action Letter (pub. avail. Feb. 17, 2004); *UBS Financial Services Inc.*, SEC No-Action Letter (pub. avail. Feb. 12, 2004); *U.S. Bancorp Piper Jaffray Inc.*, SEC No-Action Letter (pub. avail. Oct. 31, 2003); *Bear, Stearns & Co. Inc.*, SEC No-Action Letter (pub. avail. Oct. 31, 2003); *Credit Suisse First Boston Corp.*, SEC No-Action Letter (pub. avail. Jan. 29, 2002); *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).

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The disqualification of MLPF&S from the exemptions under Regulations A and D would be unduly and disproportionately severe, given that the violations alleged in the Order are not related to MLPF&S's activities in connection with any Regulation A or Regulation D offerings, as noted above, and given the extent to which the disqualification could adversely affect the business operations of MLPF&S. Such a disqualification would unfairly affect any MLPF&S affiliate who might seek to rely on the exemptions insofar as the alleged misconduct is unrelated to Regulation A or D or to any conduct or activities on the part of such affiliate. Such a disqualification would, we believe, have an adverse impact on third parties that may retain MLPF&S and its affiliates in connection with transactions that rely on these exemptions.

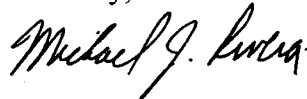
The disqualification of MLPF&S from the exemptions under Regulations A and D would also be unduly and disproportionately severe, given that MLPF&S must pay a significant civil penalty pursuant to the Order.

MLPF&S voluntarily cooperated with the inquiry into this matter by the Division of Enforcement, and has agreed to undertake to implement procedures that are reasonably designed to prevent the recurrence of the conduct that is the subject of the 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 MLPF&S has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, and the Director of the Division of Corporation Finance pursuant to his 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 Order, to MLPF&S, its affiliated entities, and issuers identified in Rule 262(b).

If you have any questions regarding this request, please contact the undersigned at (202) 639-7074.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Rivera". The signature is written in a cursive, slightly slanted style.

Michael J. Rivera