



DIVISION OF
CORPORATION FINANCE

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

July 28, 2003

John J. Kenney, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017-3954

Re: J.P. Morgan Chase & Co.—Waiver Request under Regulation A and Rule 505 of Regulation D

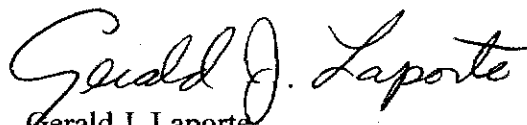
Dear Mr. Kenney:

This is in response to your letter dated July 28, 2003, written on behalf of J.P. Morgan Chase & Co. (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 the injunction included in the Final Judgment in *Securities and Exchange Commission v. J.P. Morgan Chase & Co.* (S.D. Tex.) (the "Final Judgment").

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 Final Judgment.

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 Final Judgment. Accordingly, the relief described above from the disqualifying provisions of Regulation A and Rule 505 of Regulation D is hereby granted.

Sincerely,


Gerald J. Laporte
Chief, Office of Small Business Policy

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BY FEDERAL EXPRESS

July 28, 2003

Re: In the Matter of Enron Corp. (File No. HO-09350)

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W., Room 3501
Washington, D.C. 20549-0310

Dear Mr. Laporte:

We submit this letter on behalf of our client J.P. Morgan Chase & Co. ("JPMC") in connection with a settlement (the "Settlement") being discussed with the staff of the Division of Enforcement of the Securities and Exchange Commission (the "Commission") related to transactions that one or more affiliates of JPMC entered into with Enron Corporation or one or more of its affiliates.

JPMC below requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D promulgated under the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to JPMC and any of its affiliates as a result of the entry of the Final Judgment (as defined below). JPMC also requests that these waivers be granted effective upon entry of the Final Judgment. The staff of the Division of Enforcement has informed JPMC that they do not object to the grant of the requested waivers.

BACKGROUND

JPMC has engaged in settlement discussions with the staff of the Division of Enforcement in connection with the matters described above. As a result of these discussions, JPMC expects that the Commission will file a complaint (the "Complaint") against JPMC in the United States District Court for the Southern District of Texas. JPMC expects to consent to the entry of a final judgment enjoining JPMC from violating the federal securities laws. Under the terms of the consent, JPMC will neither admit nor deny any of the allegations in the Complaint, except as to jurisdiction, but will consent to the

entry of an injunction by the District Court (the "Final Judgment"). In addition to the injunction, JPMC will agree to make payments aggregating \$135 million as disgorgement, penalties, and interest.

DISCUSSION

Regulations A and D provide exemptions from registration under the Securities Act for certain securities offerings. Rule 505(b)(2)(iii) of Regulation D, however, makes the Rule 505 exemption unavailable for the securities of any issuer described in Rule 262 of Regulation A. *See* 17 C.F.R. § 230.505(b)(2)(iii). Rule 262(a)(4) makes the Regulation A exemption unavailable if the issuer, any of its predecessors or any affiliated issuer, is subject to any "order, judgment or decree of any court of competent jurisdiction . . . permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security." *See* 17 C.F.R. § 230.262(a)(4). Additionally, Rule 262(b)(2) makes the Regulation A exemption unavailable if, among other things, any underwriter of the securities to be offered has been enjoined from engaging in any conduct or practice in connection with the purchase or sale of any security. *See* 17 C.F.R. § 230.262(b)(2). The Commission may view the Final Judgment as disqualifying JPMC and its affiliated entities from certain exemptions under Regulation A and Rule 505 of Regulation D and from serving in various capacities, including underwriter, with respect to certain offerings otherwise exempt under these Regulations. The Commission has, however, the authority to waive the exemption disqualifications of Regulation A and Rule 505 of Regulation D upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C).¹

JPMC hereby requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rule 505 of Regulation D with respect to JPMC and its affiliates on the following grounds:

1. The conduct alleged in the Complaint does not pertain to offerings under Regulation A or D.
2. The conduct alleged in the Complaint is adequately addressed in the Final Judgment.

¹ We note that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D. *See, e.g.,* Merrill Lynch & Co., Inc., SEC No-Action Letter (pub. avail. March 17, 2003); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Jan. 9, 2002); Dain Rauscher, Inc., SEC No-Action Letter (pub. avail. Sept. 27, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Prudential Securities Inc., SEC No-Action Letter (pub. avail. Aug. 28, 2000); Bear, Stearns Securities Corp., SEC No-Action Letter (pub. avail. Aug. 5, 1999).

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3. The disqualification of JPMC from the exemptions under Regulation A and Rule 505 of Regulation D would have an adverse impact on third parties that have retained JPMC or its affiliates in connection with transactions that rely on these exemptions.
4. The disqualification of JPMC from the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given the lack of any relationship between the allegations in the Complaint and any Regulation A or D activity conducted by JPMC and the extent to which such a disqualification would affect the business operations of JPMC, particularly in the area of underwriting activity.
5. JPMC and its affiliates have a strong record of compliance with securities laws, and have fully cooperated with the inquiry into this matter by the Division of Enforcement.

In light of the foregoing, we believe that good cause has been shown. Disqualification would neither serve the public interest nor protect investors. Accordingly, we respectfully request the Commission, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D, to waive, effective upon entry of the Final Judgment, the disqualification provisions in Regulations A and D to the extent they may be applicable to JPMC and any of its affiliates as a result of the entry of the Final Judgment.

Please do not hesitate to contact me if you have any questions regarding this request.

Very truly yours,



John J. Kenney