



DIVISION OF  
CORPORATION FINANCE

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

February 12, 2004

Harry J. Weiss, Esq.  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037-1420

**Re: Linsco/Private Ledger Corp.—Waiver Request under Regulation A  
and Rule 505 of Regulation D**

Dear Mr. Weiss:

This is in response to your letter dated today, written on behalf of Linsco/Private Ledger Corp. (the "Firm"), a registered broker-dealer, 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 the 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,

Gerald J. Laporte  
Chief, Office of Small Business Policy

**WILMER CUTLER PICKERING LLP**

2445 M STREET, N.W.

WASHINGTON, DC 20037-1420

TELEPHONE 1 202 663 6000

FACSIMILE 1 202 663 6363

WWW.WILMER.COM

HARRY J. WEISS  
1 202 663-6993  
HARRY.WEISS@WILMER.COM

399 PARK AVENUE  
NEW YORK, NY 10022-4697  
TELEPHONE 1 212 230 8800  
FACSIMILE 1 212 230 8888

100 LIGHT STREET  
BALTIMORE, MD 21202-1036  
TELEPHONE 1 410 986 2800  
FACSIMILE 1 410 986 2828

1600 TYSONS BOULEVARD  
SUITE 1000  
MCLEAN, VA 22102-4859  
TELEPHONE 1 703 251 9700  
FACSIMILE 1 703 251 9797

4 CARLTON GARDENS  
LONDON SW1Y5AA, ENGLAND  
TELEPHONE 44 20 7872 1000  
FACSIMILE 44 20 7839 3537

RUE DE LA LOI 15 WETSTRAAT  
B-1040 BRUSSELS, BELGIUM  
TELEPHONE 32 2 285 49 00  
FACSIMILE 32 2 285 49 49

FRIEDRICHSTRASSE 95  
D-10117 BERLIN, GERMANY  
TELEPHONE 49 30 20 22 64 00  
FACSIMILE 49 30 20 22 65 00

February 12, 2004

**BY HAND**

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

**Re: In the Matter of Certain Mutual Fund Breakpoint Discounts (HO-9791)**

Dear Mr. Laporte:

We submit this letter on behalf of our client, Linsco/Private Ledger Corp. ("LPL"), in connection with a settlement agreement (the "Settlement") arising out of an investigation by the Division of Enforcement of the Securities and Exchange Commission (the "Commission"). LPL below requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Commission 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 LPL and any of its affiliates as a result of the entry of the Commission order described below. LPL also requests that these waivers be granted effective upon the entry of the Commission order. It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers.

**BACKGROUND**

The staff of the Division of Enforcement engaged in settlement discussions with LPL in connection with the contemplated administrative proceedings arising out of the above-captioned investigation, which were brought pursuant to Section 8A of the Securities Act, and Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"). As a result of these discussions, LPL submitted an offer of settlement. In the offer of settlement, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, LPL consented to the entry of an Order of the Commission (the "Order") without

admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission).

The Order states that during 2001 and 2002 (the "relevant period"), LPL, a registered broker-dealer, sold shares issued by mutual funds without providing certain customers with the reduction in the front-end loads, or sales charges, also known as "breakpoint" discounts, described in the prospectuses of the funds. According to the Order, LPL is estimated to have failed to give certain customers breakpoint discounts totaling approximately \$2,232,805 during the relevant period.

Under the terms of the Order, the Commission made findings, without admission or denial by LPL, that by failing to disclose to certain customers that they were not receiving the benefit of applicable breakpoint discounts, LPL violated Section 17(a)(2) of the Securities Act. Further, the Commission made findings, without admission or denial by LPL, that because LPL did not charge these customers the correct sales loads as set forth in the mutual funds' prospectuses, and also did not disclose in confirmations the remuneration LPL received from the sales loads charged to these customers, LPL violated Rule 10b-10 under the Exchange Act. Based on these findings, the Order censured LPL, required LPL to cease and desist from committing any violations and any future violations of Section 17(a)(2) of the Securities Act and Rule 10b-10 under the Exchange Act, required LPL to pay a civil penalty in the amount of \$1,116,402.50 to the United States Treasury, required LPL to pay disgorgement and prejudgment interest thereon, which obligation shall be satisfied by compliance with the customer refund program summarized in the Order, and required LPL's chief executive officer to certify in writing to the Commission staff not later than 6 months after the date of the Order that LPL has implemented procedures, and a system for applying such procedures, that can reasonably be expected to prevent and detect failures by LPL to provide appropriate breakpoint discounts for which customers are eligible on purchases of front-end load mutual funds, based on information reasonably ascertainable by LPL.

## DISCUSSION

LPL understands that the entry of the Order could disqualify it and its affiliated entities from participating in certain offerings otherwise exempt under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, insofar as the Order will cause LPL to be subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. The Commission has the authority to waive the Regulation A and Rule 505 of Regulation D exemption disqualifications 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). LPL requests that the Commission waive any disqualifying effects that the Order may have under Regulation A and Rule 505 of Regulation D with respect to LPL or its affiliates on the following grounds:

1. LPL's conduct addressed in the Order does not relate to offerings under Regulation A or D.

2. LPL, pursuant to its Letter of Acceptance, Waiver and Consent ("AWC") submitted to the National Association of Securities Dealers, Inc. ("NASD") to resolve a related disciplinary action, has agreed to undertake certain remedial and corrective measures related to providing refunds to customers who did not receive appropriate breakpoint discounts. Such measures include: (a) providing written notification to each customer who purchased front-end load mutual fund shares through LPL, for the period specified by the AWC, that LPL experienced a problem delivering breakpoint discounts, and that, as a result, the customer may be entitled to a refund; (b) performing a trade-by-trade analysis of all front-end load mutual fund purchases of \$2,500 or more, for the period specified by the AWC, which review would encompass all other purchases during that same time period, regardless of dollar amount, by such customers; (c) undertaking vigorous efforts to locate each customer so identified as entitled to a refund and promptly making refunds to all customers who did not receive all applicable breakpoint discounts; and (d) providing a report on LPL's refund program to NASD.

3. The disqualification of LPL from the exemptions available under Regulation A and Rule 505 of Regulation D would, we believe, have an adverse impact on third parties that have retained or may retain LPL and its affiliates in connection with transactions that rely on these exemptions.

4. The disqualification of LPL and its affiliated entities from the exemptions available under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given that: (i) the Order relates to activity which has already been addressed; and (ii) the Commission staff has negotiated a settlement with LPL and reached a satisfactory conclusion to this matter that will require LPL to pay a total penalty of \$2,232,805, one-half of which will be paid pursuant to NASD's order, in settlement of the matters addressed in the Order and to make the certification and comply with the customer refund program described above.

In light of the foregoing, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that LPL has shown good cause that relief should be granted. Accordingly, we respectfully urge 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 Order, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to LPL and any of its affiliates as a result of the entry of the Order.<sup>1</sup>

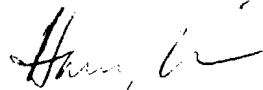
---

<sup>1</sup> We note in support of this request 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 for similar reasons. *See, e.g.*, Citigroup Global Markets Inc., f/k/a/ Salomon Smith Barney Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Morgan Stanley & Co. Incorporated, S.E.C. No-Action Letter

Gerald J. Laporte, Esq.  
Chief, Office of Small Business Policy  
February 12, 2004  
Page 4

If you have any questions regarding this request, please contact Kevin McEnergy of this office at 202/663-6596 or the undersigned at 202/663-6993.

Sincerely,



Harry J. Weiss

---

(Oct. 31, 2003); Bear, Stearns & Co. Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Lehman Brothers Inc., S.E.C. No-Action Letter (Oct. 31, 2003); J.P. Morgan Securities Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Merrill, Lynch, Pierce, Fenner & Smith, Incorporated, S.E.C. No-Action Letter (Oct. 31, 2003); Goldman, Sachs & Co., S.E.C. No-Action Letter (Oct. 31, 2003); U.S. Bancorp Piper Jaffray Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Prudential Securities Incorporated, S.E.C. No-Action Letter (Oct. 31, 2003); Merrill Lynch & Co, Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Prudential Securities Incorporated, S.E.C. No-Action Letter (pub. avail. July 10, 2003); Credit Suisse First Boston Corporation, S.E.C. No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept. 27, 2001); Legg Mason Wood Walker, Incorporated, S.E.C. No-Action Letter (pub. avail. June 11, 2001); Prudential Securities, Inc., S.E.C. No-Action Letter (pub. avail. Jan. 29, 2001).

---