

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8667 / March 15, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12236

In the Matter of

**MERRILL LYNCH, PIERCE,
FENNER & SMITH,
INCORPORATED,**

Respondent.

**ORDER UNDER RULE 602(e) OF THE
SECURITIES ACT OF 1933 GRANTING A
WAIVER OF THE DISQUALIFICATION
PROVISION OF RULE 602(c)(3)**

I.

Merrill Lynch Pierce, Fenner & Smith, Incorporated (“Merrill Lynch”) has submitted a letter, dated December 21, 2005, requesting a waiver of the disqualification from the exemption from registration under Regulation E arising from Merrill Lynch’s settlement of an administrative proceeding commenced by the Commission.

II.

On March 13, 2006, pursuant to Merrill Lynch’s Offer of Settlement, the Commission issued an Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Penalty, and Other Remedial Sanctions against Merrill Lynch. Under the Order, the Commission found that Merrill Lynch willfully violated Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rules 17a-4(b)(4) and 17a-4(j) thereunder, by failing to retain certain e-mails and by failing to furnish e-mails promptly to the staff. In the Order, the Commission ordered Merrill Lynch to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act, and Rules 17a-4(b)(4) and 17a-4(j) thereunder; censured Merrill Lynch; ordered Merrill Lynch to pay a \$2,500,000 civil monetary penalty; and ordered Merrill Lynch to comply with undertakings.

III.

The Regulation E exemption is not available for the securities of small business investment company issuers or business development company issuers if a director, officer, principal security holder, investment adviser or underwriter of the securities to be offered, or any partner, director or officer of such investment adviser or underwriter, is subject to a Commission order entered pursuant to Section 15(b) of the Exchange Act. 17 C.F.R. §230.602(c)(3). Rule 602(e) of the Securities Act of 1933 (“Securities Act”) provides, however, that the disqualification “shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. 17 C.F.R. §230.602(e).

IV.

Based upon the representations set forth in Merrill Lynch’s request, the Commission has determined that pursuant to Rule 602(e) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied as a result of the Order.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary