



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

DIVISION OF  
CORPORATION FINANCE

April 23, 2008

Thomas K. Potter, III, Esq.  
Burr & Forman LLP  
700 Two American Center  
3102 West End Avenue  
Nashville, Tennessee 37203

Re: In the Matter of Pritchard Capital Partners, LLC *et al.*, Administrative Proceeding  
File No. 3-12753—Waiver Request under Regulation A and Rule 505 of Regulation D

Dear Mr. Potter:

This is in response to your letter dated today, written on behalf of Pritchard Capital Partners, LLC ("Pritchard Capital") and Thomas Ward Pritchard ("T.W. Pritchard") (together, the "Respondents"), and constituting an application for waiver 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 waivers from any disqualification from exemptions available under Regulation A and Rule 505 of Regulation D that may have arisen by virtue of the order entered today by the Securities and Exchange Commission under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") in *In the Matter of Pritchard Capital Partners, LLC et al.*, Securities Exchange Act Release No. 57704 (the "Order"). Orders entered under that provision may give rise to disqualifications under Rules 262 and 505. The Order also was entered under Section 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act"). Neither Rule 262 nor Rule 505 provides for disqualification arising from orders entered under those provisions. The order censured Pritchard Capital, ordered Pritchard Capital to cease and desist from committing or causing any violations and future violations of Section 17(a)(1) of the Exchange Act, Rule 17a-3(a)(6) thereunder, and Rule 22c-1 under the Investment Company Act, and ordered Pritchard Capital to pay disgorgement of \$55,000, prejudgment interest of \$17,011.94, and a civil money penalty of \$50,000. The Order suspended T.W. Pritchard from association in a supervisory capacity with any broker or dealer for nine months and ordered T.W. Pritchard to pay a civil money penalty of \$50,000.

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. We also have assumed that the Respondents have complied and will continue to comply with the Order.

The sanctions imposed on Pritchard Capital by the Order are not the types of sanctions described in Rule 262 or Rule 505 as resulting in a disqualification.\* Accordingly, absent further explanation as to why waiver

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\* Although the censure of Pritchard Capital in an administrative proceeding under Section 15(b) of the Exchange Act may initially appear to be a disqualifying event under Rule 262 and Rule 505, the Commission consistently has taken the position that issuance of a censure in an administrative proceeding is not a disqualifying event under Rule 262 or Rule 505. See SEC Release No. 33-6455, Question 66 (Mar. 3, 1983) [48 FR 10045, 10053 (Mar. 10, 1983)] (censure has no continuing force and thus censured person is not "subject to an order of the Commission entered pursuant to section 15(b)" within the meaning of Rule 505); Howard, Prim, Rice, Nemerovski, Canady & Pollak, SEC No-Action Letter, 1975 WL 11300 (Jan. 8, 1975, publicly available Feb. 11, 1975) (Rule 252 (predecessor to Rule 262) does not comprehend a situation where an underwriter of a Regulation A offering has stipulated to a consent order in a Commission administrative proceeding providing only for a censure, with no suspension or other sanction). *Accord*, Samuel Beck, SEC No-Action Letter, 1975 WL 11471 (May 15, 1975, publicly available June 24, 1975). See also SEC Release No. 33-6289 (Feb. 13, 1981) [46 FR 13505,

Thomas K. Potter, III, Esq.

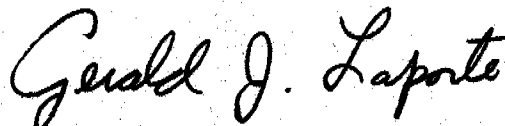
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relief would be appropriate, I am declining to grant your request for a waiver with respect to Pritchard Capital as unnecessary.

On the other hand, on the basis of your letter, I have determined that you have made showings 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 T.W. Pritchard. Accordingly, pursuant to delegated authority, T.W. Pritchard is granted relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 of Regulation D that may have arisen as a result of entry of the Order.

Very truly yours,



Gerald J. Laporte

Chief, Office of Small Business Policy



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April 23, 2008

**VIA EMAIL, ORIGINAL TO FOLLOW BY U.S. MAIL**

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

**Re: *In re Pritchard Capital Partners, LLC, et al.,*  
Admin. Proc. File No. 3-12753 (SEC April 23, 2008)  
Our File: 180630-04**

Dear Mr. Laporte:

I submit this letter on behalf of our clients, Pritchard Capital Partners, LLC ("Pritchard Capital") and Thomas Ward Pritchard ("T.W. Pritchard" and together with Pritchard Capital, the "Settling Respondents"), two among the Settling Respondents in the captioned proceeding ("Proceeding") by the Securities and Exchange Commission (the "Commission"). Pursuant to Commission 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"), the Settling Respondents hereby request waivers of any disqualifications from exemptions under Regulation A and Rule 505 of Regulation D that may arise with respect to offerings by issuers who hereafter engage Pritchard Capital (or other underwriter as to which T.W. Pritchard is or may be a partner, director or officer) as an underwriter, as a result of the entry of the Order(s) described below. The Settling Respondents request that these waivers be granted effective upon the date of entry of the Order(s), or April 23, 2008. 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 the Settling Respondents in connection with the Proceeding. Pritchard Capital and T.W. Pritchard each submitted an executed Offer of Settlement, solely for the purpose of proceedings by or on behalf of the Commission or in which the Commission is a party, and consented to the entry of Order(s) by the Commission (the "Orders") without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission and the subject matter of the proceeding). The Commission entered the Order(s) on April 23, 2008.

As to Pritchard Capital, the Proceeding was brought pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the "Investment Company Act") and asserted that Pritchard Capital willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, willfully aided and abetted and caused violations of Rule 22c-1 of Section 22(c) of the Investment Company Act and violated Sections 15(b)(4) and 15(b)(6) of the Exchange Act. The Proceeding asserted those violations based upon alleged late trading in mutual funds by former clients, facilitated by the activities of two former associated persons (McMahon and Van Cook) during the period November 2001 through July 2003. The Commission's Order provides Pritchard Capital is (a) censured; (b) required to cease and desist from committing or causing any violations and any future violations of the referenced provisions; (c) required to comply with the undertakings (of continued cooperation) in the Order; (d) required to pay disgorgement of \$55,000 along with pre-judgment interest of \$17,011.94; and (e) required to pay a civil money penalty of \$50,000.

As to T.W. Pritchard, the Proceeding was brought pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and asserted Pritchard violated Section 15(b)(6) of the Exchange Act. The Proceeding asserts the violation based upon alleged failure to supervise the activities of the former associated persons (e.g. Van Cook) in connection with their alleged facilitation of mutual fund late trading. The Commission's Order provides T.W. Pritchard is (f) censured; (g) suspended from association in a supervisory capacity with any broker or dealer for a period of nine months; (h) required to comply with the undertakings (of continued cooperation) in the Order; and (i) required to pay a civil money penalty of \$50,000. No other sanctions or remedial measures are proposed.

## DISCUSSION

The Settling Respondents understand that the entry of the Order(s) may preclude them from acting as underwriter to a third-party issuer wishing to rely upon certain exemptions under Regulation A and Rule 505 of Regulation D, promulgated under the Securities Act, insofar as the Order(s) may be deemed to cause the Settling Respondents to be "subject to an order of the Commission pursuant to Section 15(b) of the Exchange Act and Section 203(e) of the Investment

Advisers Act of 1940." See 17 C.F.R. §§230.262(b)(3) and 230.505(b)(2)(iii). The Commission has the authority to waive these 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).

For the following reasons, the Settling Respondents request that the Commission waive any disqualifying effects that the Order(s) may have with respect to offerings by issuers having engaged or participated with the Settling Respondents in underwritings relying upon exemptions under Regulation A and Rule 505 of Regulation D:

1. The Settling Respondents' conduct addressed in the Order(s) does not relate to underwriting at all, much less to offerings under Regulations A or D.

2. The "imputed disqualification" of the Settling Respondents from participating in underwriting activities in connection with offerings relying upon exemptions available under Regulations A and D would unnecessarily limit issuer choice and could have an adverse impact on third parties that may retain the Settling Respondents and their affiliates in connection with transactions that rely on these exemptions. Such "imputed disqualification" also would place the Settling Respondents at a competitive disadvantage with regard to third-party issuers that rely on these exemptions.

3. The "imputed disqualification" would be unduly and disproportionately severe given the nature of the violations addressed in the Orders and the lack of any relationship between the violations and any Regulation A or D related activity conducted by the Settling Respondents or their affiliates. Moreover, it would result in an anti-competitive penalty not contemplated by the Order(s) and at odds with the remedial purposes of the Act.

4. The Commission's Enforcement staff has reached a mutually satisfactory settlement with the Settling Respondents in the Proceeding, as reflected in the Commission's Order(s), which includes cease-and-desist orders (Pritchard Capital), censures, a supervisory suspension (T.W. Pritchard), the payment of disgorgement along with interest (Pritchard Capital) and civil money penalties, as well as undertakings of continued cooperation.

5. The Settling Respondents have an otherwise strong record of compliance with the securities laws and have cooperated fully with the Commission in its investigation of this matter and in its resolution. The Settling Respondents have taken measures to prevent recurrence of the activities at issue, including disaffiliation with the associated persons whose conduct was at issue (McMahon and Van Cook), discontinuance of such mutual fund trading and such further measures as are detailed in the Order(s).

Gerald J. Laporte, Esq.  
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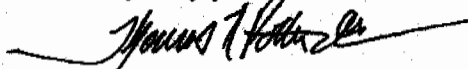
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In light of the grounds for relief described above, we believe that disqualification is not necessary, either in the public interest or for the protection of investors, and that the Settling Respondents have shown good cause that relief should be granted. Accordingly, we respectfully request that the Commission waive the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to offerings seeking to rely upon exemptions under Regulation A or Regulation D<sup>1</sup> and in which the Settling Respondents may be engaged or participate as underwriter or otherwise.

If you have any questions regarding this request, please contact me at (615) 724-3231.

With kind regards, I remain,

Very truly yours,



Thomas K. Potter, III

TKPIII/

cc Robert K. Gordon  
Yolanda L. Ross  
Thomas W. Pritchard  
Pritchard Capital Partners, LLC

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<sup>1</sup> We note in support of this request that the Commission has granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. See, e.g., Prudential Equity Group, LLC, S.E.C. No-Action Letter (pub. avail. Aug. 28, 2006); Deutsche Investment Management Americas, Inc., et al., S.E.C. No-Action Letter (pub. avail. Sept. 28, 2006).