



DIVISION OF  
CORPORATION FINANCE

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

March 11, 2009

Dixie L. Johnson, Esq.  
Fried, Frank, Harris, Shriver & Jacobson LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004

**Re: In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated,  
Administrative Proceeding File No. 3-13407  
Waiver Request under Regulation A and Rule 505 of Regulation D**

Dear Ms. Johnson:

This responds to your letter dated March 11, 2009, written on behalf of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), 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 that may have arisen by reason of the order entered March 11, 2009 by the Securities and Exchange Commission in In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Release No. 34-59555 (the "Order"). The Order was entered under section 15(b)(4) and section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and sections 203(e)(5) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"). The Order censures and requires MLPF&S to pay a civil penalty in the amount of \$7 million in addition to ordering MLPF&S to comply with certain undertakings. The Order also requires MLPF&S to cease and desist from committing or causing any violations and any future violations of section 15(f) of the Exchange Act and Section 204(A) of the Advisers Act.

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 MLPF&S will comply with the Order.

On the basis of your letter, I have determined that you have made showings of good cause under Rule 262 and Rule 505 that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 by reason of entry of the Order.

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Merrill Lynch, Pierce, Fenner & Smith Incorporated  
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Accordingly, pursuant to delegated authority, and without determining whether or not any such disqualification arose by virtue of entry of the Order, MLPF&S and other persons subject to any disqualification from exemptions otherwise available under Regulation A and Rule 505 that arose by reason of entry of the Order are granted relief.

Very truly yours,

A handwritten signature in black ink that reads "Gerald J. Laporte". The signature is written in a cursive, flowing style.

Gerald J. Laporte  
Chief, Office of Small Business Policy

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March 11, 2009

**By Hand and Electronic Mail**

Gerald J. Laporte  
Director, *Office of Small Business Policy*  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: In the Matter of Merrill Lynch, Pierce, Fenner & Smith  
Incorporated**

Dear Mr. Laporte:

On behalf of our client, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"),<sup>1</sup> 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 (the "Securities Act"), a waiver of any disqualification that may have arisen pursuant to Rule 262 or Rule 505 as a result of the entry of an order dated as of this date in administrative and cease-and-desist proceedings brought by the Securities and Exchange Commission (the "Commission") against MLPF&S in the above-referenced matter (the "Order"). We respectfully request that this waiver be granted effective upon the entry of the Order. It is our understanding that the Division of Enforcement does not object to the grant of the requested waiver by the Division of Corporation Finance.

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

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## BACKGROUND

MLPF&S has consented, as part of a settlement with the Commission in the above-captioned matter, to the entry of the Order pursuant to Section 15(b)(4) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) and Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) requiring MLPF&S to cease and desist from committing or causing violations of Section 15(f) of the Exchange Act and Section 204A of the Advisers Act, censuring MLPF&S, imposing a civil money penalty in the amount of \$7 million, and ordering MLPF&S to comply with certain undertakings. The Order includes findings, which MLPF&S neither admitted nor denied, that MLPF&S violated Section 15(f) of the Exchange Act and Section 204A of the Advisers Act by failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information.

## DISCUSSION

We understand that 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.<sup>2</sup> *See* 17 C.F.R. §§ 230.262,

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<sup>2</sup> *See, e.g., First Southwest Company*, SEC No-Action Letter (pub. avail May 27, 2008); *Hartford Investment Financial Services, LLC, HL Investment Advisors, LLC, and Hartford Securities Distribution Company, Inc.*, SEC No-Action Letter (pub. avail May 14, 2008); *Gabelli Funds LLC*, SEC No-Action Letter (pub. avail Apr. 24, 2008); *Bear, Stearns & Co., Inc.*, SEC No-Action Letter (pub. avail Dec. 15, 2006); *Deutsche Investment Management Americas, Inc., Deutsche Asset Management, Inc., and Scudder Distributors Inc.*, SEC No-Action Letter (pub. avail Sep. 28, 2006); *Dunham & Associates Investment Counsel, Inc., Jeffrey A. Dunham, and Dunham & Associates Securities, Inc.*, SEC No-Action Letter (pub. avail Sep. 22, 2006); *A.G. Edwards & Sons, Inc.*, SEC No-Action Letter (pub. avail May 31, 2006); *Banc of America Securities LLC*, SEC No-Action Letter (pub. avail May 31, 2006); *Bear, Stearns & Co. Inc.*, SEC No-Action Letter (pub. avail May 31, 2006); *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); *Credit Suisse First Boston*, SEC No-Action Letter (pub. avail. Jan. 29, 2002); *Stephens, Inc.*, SEC No-Action Letter (pub. avail. Dec. 27, 2001); *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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230.505(b). Accordingly, MLPF&S hereby requests a waiver of any disqualifications that may have arisen 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, it relates to the safeguarding of confidential client order information transmitted over the firm's institutional equity squawk box. Further, none of the undertakings or requirements of the settlement directly apply to offerings under Regulation A or D or to any activities that MLPF&S might conduct in connection with such offerings.

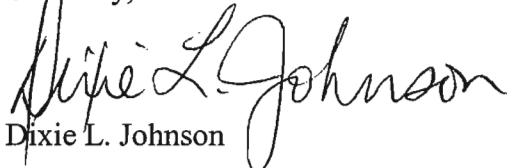
The disqualification of MLPF&S from the exemptions under Regulations A and D would be unduly and disproportionately severe, given that the violations alleged in the Order are not related to MLPF&S's activities in connection with any Regulation A or Regulation D offerings, as noted above, and given the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

MLPF&S has agreed to establish systems, policies, and procedures that are reasonably designed to achieve compliance with the federal securities laws and rules concerning establishing, maintaining, and enforcing written policies and procedures reasonably designed to prevent the misuse of confidential customer order information. Furthermore, MLPF&S voluntarily cooperated with the inquiry into this matter by the Division of Enforcement.

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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 Division of Corporation Finance pursuant to its 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 entry of the Order.

Sincerely,

A handwritten signature in black ink that reads "Dixie L. Johnson". The signature is written in a cursive style with a large, prominent "D" and "J".

Dixie L. Johnson

cc: Robert Murphy, Esq.  
*Division of Enforcement*  
*Securities and Exchange Commission*