



DIVISION OF  
CORPORATION FINANCE

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

August 25, 2004

Aaron R. Marcu, Esq.  
Covington & Burling  
1330 Avenue of the Americas  
New York, NY 10019

**Re: SG Cowen & Co., Inc.—Waiver Request under Regulation A and  
Rule 505 of Regulation D**

Dear Mr. Marcu:

This is in response to your letter dated today, written on behalf of SG Cowen & Co., Inc., LLC (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 may arise by virtue of the entry of an order dated today by the Securities and Exchange Commission ordering, pursuant to Section 8A of the Securities Act of 1933, that the Firm cease and desist from committing or causing any violations and any future violations of Section 17(b) of the Securities Act; that the Firm is censured pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934; and that the Firm pay a civil money penalty of \$125,000 (the "Order").

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings necessary to support the Order. We also have assumed that the Firm will comply with the Order.

On the basis of your letter, I have 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, pursuant to delegated authority, and without necessarily agreeing that the requested relief is necessary, 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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August 25, 2004

*BY EMAIL AND FIRST CLASS MAIL*

Gerald J. Laporte, Esq.  
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 Payments for Research,  
SEC File No. HO-9700 (SG Cowen & Co., LLC)*

Dear Mr. Laporte:

We submit this letter on behalf of our client SG Cowen & Co., LLC ("SG Cowen"), which is a settling respondent in the above-referenced investigation by the Securities and Exchange Commission (the "Commission") into a payment received by SG Cowen that allegedly violated Section 17(b) of the Securities Act of 1933 (the "Securities Act").

SG Cowen 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, a waiver of any disqualification from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to SG Cowen or any of its affiliates as a result of the entry of the Commission order described below. SG Cowen requests that these waivers be granted effective upon entry of such order by the Commission. It is our understanding that the Staff of the Division of Enforcement does not object to the grant of the requested waiver by the Division of Corporate Finance.

## **BACKGROUND**

The Staff of the Division of Enforcement has engaged in settlement discussions with SG Cowen in connection with the investigation described above. As a result of these discussions, SG Cowen has submitted an Offer of Settlement. In this Offer of Settlement, solely for the purpose of the above-captioned proceeding and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, SG Cowen has consented to the entry by the Commission of an Order Instituting Proceedings, Making Findings and Imposing Sanctions (the "Order"), without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission). Specifically, the Order states that SG Cowen

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received a payment in consideration for publishing research reports without disclosing this payment in the reports.

Under that Order, which was issued today, the Commission made findings, without admission or denial by SG Cowen, that it violated Section 17(b) of the Securities Act. The Order censures SG Cowen pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934. Additionally, the Order requires that SG Cowen cease and desist from committing or causing any violations or future violations of Section 17(b) of the Securities Act pursuant to Section 8A of the Securities Act and pay a civil money penalty of \$125,000 to the United States Treasury.

### DISCUSSION

SG Cowen understands that the entry of the Order may 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 may be deemed to cause SG Cowen to be subject to an order of the Commission 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).<sup>1</sup>

For the following reasons, SG Cowen requests that the Commission waive any disqualifying effect that the Order may have on it, or any of its affiliates, based on a determination that it is not necessary under the circumstances that such exemption under Regulation A and Rule 505 of Regulation D be denied.

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

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<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., UBS Securities, LLC*, S.E.C. No-Action Letter (pub. avail. Oct. 31, 2003) (charges including Section 17(b) of the Securities Act); *U.S. Bancorp Piper Jaffray, Inc.*, S.E.C. No-Action Letter (pub. avail. Oct. 31, 2003) (charges including Section 17(b) of the Securities Act). *See also 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); *In the Matter of Certain Market-Making Activities on NASDAQ*, S.E.C. No-Action Letter (pub. avail. Jan. 11, 1999); *Stephens Incorporated*, S.E.C. No-Action Letter (pub. avail. Nov. 23, 1998).

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

3. The disqualifications would be unduly and disproportionately severe given: (i) the lack of any relationship between the violations addressed in the Order and any Regulation A or D related activity conducted by SG Cowen; and (ii) the fact that the Commission staff has negotiated a settlement with SG Cowen and reached a satisfactory conclusion to this matter that includes a cease and desist order, together with a censure and the payment of a substantial civil money penalty.

In light of the foregoing, we believe that disqualification is not necessary in the public interest or for the protection of investors, and that SG Cowen has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, and the Division of Corporation Finance pursuant to delegated authority, to waive the disqualification provisions in Regulation A and D to the extent that they may be applicable to SG Cowen or any of its affiliates as a result of the entry of the Order.

Please do not hesitate to contact me at (212) 841-1078 if you have any questions regarding this request.

Respectfully submitted,

  
Aaron R. Marcu

cc: Yuri B. Zelinsky, Esq.