



DIVISION OF
CORPORATION FINANCE

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

March 11, 2009

Kevin P. McEnery, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

**Re: SEC v. Automated Trading Desk Specialists, LLC
Civil Action No. 09-cv-1977 (S.D.N.Y.)—Waiver Request
under Regulation A and Rule 505 of Regulation D**

Dear Mr. McEnery:

This responds to your letter dated March 11, 2009, written on behalf of Automated Trading Desk Specialists, LLC (“ATDS”), 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 Final Consent Judgment as to ATDS signed March 11, 2009 and entered on the same day by the United States District Court for the Southern District of New York in *SEC v. Automated Trading Desk Specialists, LLC*, Civil Action No. 09-cv-1977 (the “Judgment”). The Judgment permanently restrains and enjoins ATDS from violating Section 17(a)(1) of the Securities Exchange Act of 1934 and Rule 17a-3 under that law, and Rule 17 of Article 9 of the Rules of the Chicago Stock Exchange, Inc. relating to prohibitions on personal selling and purchasing. The Judgment also ordered ATDS to pay disgorgement of \$4.2 million and a civil penalty in the amount of \$800,000.

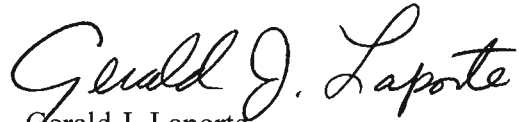
For purposes of this letter, we have assumed, as facts, the representations set forth in your letter and the findings supporting entry of the Judgment. We also have assumed that ATDS will comply with the Judgment.

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

Kevin P. McEnery, Esq.
Automated Trading Desk Specialists, LLC
March 11, 2009
Page 2

Judgment. Accordingly, pursuant to delegated authority, ATDS and other persons subject to disqualification from exemptions otherwise available under Regulation A and Rule 505 that arose by reason of entry of the Judgment are granted relief.

Very truly yours,

A handwritten signature in cursive script that reads "Gerald J. Laporte". The signature is written in black ink and is positioned above the printed name and title.

Gerald J. Laporte
Chief, Office of Small Business Policy

March 11, 2009

Kevin P. McEnery

BY E-MAIL AND MESSENGER

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Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., 3rd Floor
Washington, D.C. 20549-3628

Re: SEC v. Automated Trading Desk Specialists, LLC, Civil Action No. 1:09cv1977 (LTS) (S.D.N.Y. Mar. 4, 2009; In the Matter of Certain Specialist Trading on Regional and Options Exchanges, File No. NY-7439)

Dear Mr. Laporte:

This letter is submitted on behalf of our client Automated Trading Desk Specialists, LLC (“ATDS”), the settling defendant in the above-cited civil action arising out of the above-captioned investigation. ATDS hereby requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Securities and Exchange Commission (the “Commission”) promulgated under the Securities Act of 1933 (the “Securities Act”), waivers of any disqualifications from relying on the exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to ATDS and any of the issuers described below as a result of the entry of the final judgment today in the civil action filed by the Commission in federal district court (the “Final Judgment”), which is described below. ATDS requests that these waivers be issued and made effective upon the entry of the Final Judgment. It is our understanding that the Enforcement Staff of the Commission’s New York Regional Office does not object to the grant of the requested waivers.

BACKGROUND

The Enforcement Staff of the New York Regional Office engaged in settlement discussions with ATDS in connection with the above-captioned investigation. As a result of these discussions, ATDS submitted an executed Final Consent Judgment As To Automated Trading Desk Specialists, LLC (the “Consent”) that was submitted by the Commission Staff to the court after the Commission approved the negotiated settlement.

In the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, ATDS agreed to consent to the entry of the Final Judgment, without admitting or denying the allegations contained in the Commission’s Complaint (other than those relating to the jurisdiction of the Commission, which are admitted). The Complaint and the Consent, which were filed on March 4, 2009, concern ATDS’s alleged failure to meet its obligations as a specialist to serve public customer orders over its own

Gerald J. Laporte, Esq.
March 11, 2009
Page 2

proprietary interests while executing trades on the Chicago Stock Exchange (“CHX”). The Complaint alleges that ATDS violated Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17a-3 thereunder, CHX Article 9, Rule 17 (Personal Selling and Purchasing Prohibited), and CHX Article III, Rule 2 (Precedence to Orders in Book), before its repeal was effective. More specifically, the Complaint alleges that ATDS engaged in improper trades for its own proprietary accounts by failing to match buy and sell agency orders and that it failed to make or keep current a blotter containing an itemized daily record of all purchases and sales of securities effected by ATDS for its proprietary accounts. The Final Judgment did the following: permanently enjoined ATDS from violating Section 17(a) of the Exchange Act, Rule 17a-3(a)(1) thereunder, and CHX Article 9, Rule 17; and ordered ATDS to, among other things, pay disgorgement of \$4.2 million and a civil penalty of \$800,000.

DISCUSSION

ATDS understands that the entry of the Final Judgment may disqualify it, affiliated entities, and other issuers from certain exemptions under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act. ATDS is concerned that, should it be deemed to be a promoter, or the underwriter of the securities, of an “issuer” for the purposes of Securities Act Rule 262(b)(2), ATDS, its issuer affiliates, and other issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Regulations A and 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).

ATDS requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rule 505 of Regulation D with respect to ATDS, its issuer affiliates, or third-party issuers on the following grounds:

1. ATDS’s conduct alleged in the Commission’s Complaint and addressed by the Final Judgment does not pertain to Regulation A or D.
2. The disqualification of ATDS, any of its issuer affiliates, or third-party issuers with which it is associated in one of the capacities listed above from relying upon the exemptions under Regulations A and Rule 505 of Regulation D would be unduly and disproportionately severe given the nature of the violations addressed by the Final Judgment and the extent to which disqualification may affect the business operations of ATDS, its issuer affiliates, or such third-party issuers by impairing their ability to issue securities pursuant to these exemptions to raise new capital or for other purposes. In addition, the disqualification of ATDS, its issuer affiliates, or third-party issuers from using these regulatory exemptions may place ATDS or those issuers at a competitive disadvantage with respect to third parties that might seek to invest in securities that rely on the regulatory exemptions.

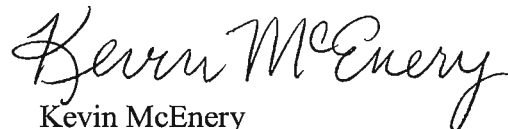
Gerald J. Laporte, Esq.
March 11, 2009
Page 3

3. The disqualification of ATDS, any of its issuer affiliates, or third-party issuers from relying on the exemptions under Regulation A and Rule 505 of Regulation D also would be unduly and disproportionately severe, given that: (a) the Complaint and the Final Judgment relate to activity that was addressed in the civil action; and (b) the Commission Staff has negotiated a settlement with ATDS and has reached a satisfactory conclusion to this matter that enjoined ATDS from violating the provisions listed above and ordered ATDS to, among other things, pay a total of \$5 million in disgorgement and a civil penalty.

In light of the grounds for relief discussed above, we believe that disqualification from being able to rely on the exemptions is not necessary, in the public interest, or for the protection of investors, and that ATDS has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission to waive, effective upon the entry of the Final Judgment in federal district court, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to ATDS, any affiliated issuers, and certain third-party issuers described above.¹

If you have any questions regarding this request, please contact me at 202-663-6596.

Very truly yours,


Kevin McEnergy

Copy to: David Rosenfeld, Esq.
Associate Regional Director
New York Regional Office

¹ 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.*, Sybaris Clubs Int'l, Inc., S.E.C. No-Action Letter (pub. avail. July 1, 1996); The Cooper Companies, Inc., S.E.C. No-Action Letter (pub. avail. Dec. 20, 1994); Michigan Nat'l Corp., S.E.C. No-Action Letter (pub. avail. Dec. 17, 1993); General Electric Co., S.E.C. No-Action Letter (pub. avail. May 24, 1988); *see also* Prudential Securities Inc., 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).